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PROTECTING AMERICA'S ESTUARIES: FLORIDA

(PART 1–A)

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

MAY 25, 1973

Printed for the use of the Committee on Government Operations

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U.S. GOVERNMENT
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PROTECTING AMERICA'S ESTUARIES: FLORIDA

(Part 1–A)

FRIDAY, MAY 25, 1973

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Miami, Fla.

The subcommittee met, pursuant to notice, at 9 a.m., in the Dade County Courthouse, county commissioner's chambers, Hon. Henry S. Reuss (chairman of the subcommittee) presiding.

Present: Representatives Henry S. Reuss, Dante B. Fascell, Leo J. Ryan, Guy Vander Jagt, and Gilbert Gude.

Also present: David B. Finnegan, associate counsel; Ruth M. Wallick, clerk; and J. P. Carlson, minority counsel, Committee on Government Operations.

Mr. REUSS. Good morning.

The House Conservation and Natural Resources Subcommittee today begins hearings on the environmental problems of Florida, and its estuaries and coastal and other waters. These hearings are part of our subcommittee's continuing study of this Nation's estuaries, which have previously covered the San Francisco Bay and Delta, the Potomac Estuary and the Puget Sound area of Washington.

We of the subcommittee are particularly pleased to be in the home State of one of the Congress most able and valuable Members, Congressman Dante Fascell of this area, and I am going to ask Congressman Fascell to preside at as much of our hearings as he is able to.

I am very proud to be accompanied by two other fine members of the subcommittee who happen to represent other great areas of our country which have been the subject of two of our previous estuary hearings: Congressman Gil Gude of Maryland, who knows as much about the Potomac River, an estuary, as anyone in Congress; and Congressman Leo Ryan of California, for whom the San Francisco Bay area is of particular significance.

We have a very able subcommittee staff, represented here by Mr. Dave Finnegan, associate counsel; Mr. Philip Carlson, our fine minority counsel, and Mrs. Ruth Wallick, our subcommittee clerk.

Florida contains some 54,000 square miles of land and over 4,200 square miles of water. Its many bays, sounds and indentations have created a detailed coastline of almost 8,500 miles.

In addition to its great salt water fisheries, Florida has over 30,000 ponds and lakes and 1,500 miles of streams and rivers. It is estimated that at least half of Florida's more than 7.2 million population engage in sport fishing.

Florida also has a large wildlife population, including the bobwhite quail, wild turkey, white-tailed deer, beydeer, the Everglade kite, mourning dove, Cape Sable sparrow, many species of waterfowl, grey fox, bobcat, alligator, crocodile, and many others. Some of these—such as the Cape Sable sparrow—are on the Interior Department's endangered species list.

But Florida, like many of our other States, is beset by major environmental problems. They include water and air pollution, rapid depletion of valuable wetlands, degradation of its natural beauty, destruction of wildlife and vegetation, and other ailments of a society which is failing to conserve its natural resources and amenities.

At our hearings we will hear testimony on whether the various Federal agencies are responsibly, imaginatively, economically, and efficiently carrying out their duties under existing laws and regulations to protect and enhance the environmental quality of Florida.

Some of the specific matters to be covered are:

(1) The extent to which the wetlands are being destroyed by dredging and filling;

(2) The progress, or lack of it, in providing adequate treatment for municipal and industrial wastes;

(3) The effect of ocean outfalls on ocean resources, human health, and public recreation;

(4) What efforts are being made to prevent eutrophication of Florida's waters—that is largely the problem of phosphates;

(5) The adequacy of protection for endangered wildlife; and

(6) The adequacy of Federal enforcement of pollution control laws and whether persons who illegally dredge and fill wetlands are being proceeded against.

We are also concerned about several confusing Federal policies. For example, in 1971, the Bureau of Sport Fisheries and Wildlife adopted excellent guidelines for the protection of the dwindling wetlands in the Southeastern United States, including Florida. The Bureau's guidelines provide that it will oppose development of wetlands unless the developer shows that:

(1) The work is water-related or water dependent;

(2) No alternative upland sites are available; and

(3) There is an overall public need.

On February 21, 1973, the EPA also adopted a wetlands policy—one not as clear as the Bureau's. We are troubled by the recent interpretation of the policy by EPA's Regional Administrator, who indicated that it allows some use of wetlands, particularly where, and I quote, "absolutely necessary to comply with State-Federal pollution laws." We think this interpretation may be inconsistent with EPA policy. We certainly hope EPA will not use its antipollution mandate to undercut national wetlands protection policies.

On May 10, 1973, a few days ago, the Corps of Engineers—after almost 2 years of urging by this subcommittee—published for public comment its new permit regulations which include its proposed wetlands protection policy (38 F.R. 12217). Unfortunately, this does not conform to either the Bureau or EPA policies. Essentially, the corps policy provides that no permit issued under section 10 of the River and Harbor Act of 1899 will be granted to build, dredge, or fill wetlands unless the district engineer concludes (a) that the benefits of

the proposed work outweigh the damage to the wetlands resource, and (b) that the proposed work is necessary to realize those benefits. This leaves unfettered discretion with the district engineer to issue permits allowing construction, dredging, or fill work in many wetland areas. We are afraid that it may result in district engineers finding that economic benefits outweigh the intangible wetland values, and that the wetlands will be destroyed.

An earlier draft of the corps' regulations, dated January 1972—like the guidelines of the Bureau of Sport Fisheries and Wildlife—provided that if the work is not dependent on waterfront access, or if the use being sought can be satisfied either by an alternate site or by existing public facilities, the permit application will not ordinarily be granted. The Office of Management and Budget, however, required the corps to omit this provision in favor of the one I just described.

The substantial differences in the policies of the Bureau, EPA, and the corps is bound to confuse the public. Therefore, we want to learn how these three agencies intend to reconcile their differences. Indeed, we think that EPA and the corps should adopt the sound and straightforward policy of the Bureau. We hope that the Bureau will not succumb to any pressure from the OMB or the Bureau's parent agency, the Interior Department, and cave in just to accommodate the corps.

Another area of deep concern about which we have received information is the water quality and health aspects of various types of subdivision canals typically developed in Florida wetland areas. These canals are usually constructed upland of navigable waters and then are connected by removal of a plug to the navigable waters. This connection requires a permit from the corps under section 10 of the River and Harbor Act. However, in our judgment, the corps has not performed capably in either requiring such permits or investigating the adverse effects of these canals when considering the permit application.

In one instance, according to the Interior Department, the corps' Jacksonville District decided not to prosecute or require a permit where a developer of canals in Plantation, Fla., connected them to a navigable waterway without a permit. The developer did seek a permit for bulkheading in connection with this work, but the corps did not issue one. Instead, the corps issued a so-called letter of permission—a class C permit—without public notice. When our staff asked about this, Interior told us that the corps said that the decision not to require a permit for the existing canals was based on the corps' understanding that the Florida Department of Pollution Control would not certify this after-the-fact, dead end system. Without this certification, Interior notes, the permit could not, under the law, be issued.

This corps decision to wink at the law precluded an opportunity for public review of the canal system. We want to know why the corps circumvented the law, rather than obeying it.

The corps, in a May 21, 1973, letter to us, noted that it issued four dredge permits to the ITT Levitt Co., now known as ITT Community Development Corp., "for connections of upland canals to the Florida Intracoastal Waterway (plug removals)" for ITT's Palm Coast subdivision. One was issued in February 1970, and the other three in December 1970. The corps stressed to us that:

(a) the ITT application did not reveal the extent of the upland canals;

(b) the corps' public notices "did not generate any substantive objections" from anyone; and

(c) each permit thus was, in the corps' phrase, "routinely" issued.

A review of the corps' permit file clearly shows that each permit application and public notice provided little information about the proposed work. The applications gave no inkling about the many miles of canals that were to be connected. Moreover, the corps did not conduct any investigation of the permit application, nor did it require that the applicant prove "affirmatively" that the applications were in the public interest. Instead, the corps relied on the public to object, and when the public was not heard from the corps "routinely" issued the permits.

On September 1, 1971, the corps advised ITT's chief engineer, John A. Barton, that "plugs" were placed illegally in the St. Joe Canal without a permit and that ITT had performed some other "illegal" work.

When the Florida Audubon Society, on November 5, 1971, asked the corps if any permits had been issued for this development, the corps replied, on February 8, 1972, that one permit was issued to ITT in February of 1970. The corps did not mention the other three permits, or, most importantly the "illegal" work.

As far as we can determine, the corps never informed anyone of this "illegal" work—nor did it prosecute ITT for it.

Last June, ITT applied for another permit to construct "nine additional dredged entranceways" to a navigable waterway. This time, the corps required that ITT provide additional information "to show the complete system of canals behind the plugs." As a result, the Bureau of Sport Fisheries and Wildlife, EPA, and others, "have questioned the propriety of the continued upland excavation."

We want to know why the corps did not investigate the initial ITT applications in 1970 and why the corps failed to require, as we recommended in March 1970, that ITT prove "affirmatively" that the granting of a permit would be in the public interest.

We also want to know why the corps failed to prosecute ITT for illegal work discovered back in 1971, and what the corps plans to do, if anything, about the pending ITT permit application in the face of several recommendations of Government agencies for denial.

Before calling on our first panel, I ask unanimous consent to insert at this point in the record statements submitted by our colleagues, Representative Charles E. Bennett of Florida's Third District and Representative Bill Chappell, Jr., of Florida's Fourth District.

[The statements referred to follow:]

PREPARED STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I very much appreciate your allowing me to present my testimony in regard to the current hearings you are holding on environmental problems in Florida. Florida has a number of environmental problems, but the one I would like to speak about today is specific in nature and relates to the Nassau River Valley area of northeast Florida. This is one of the most productive estuarine areas in the United States as identified by Florida conservation officials. The Nassau River is almost 100 percent in its natural state but this will not be the case for long. Developers want to go into this area and industry would like to set up operations along the banks of the Nassau River. I have legislation pening, H.R. 1719, a copy of which I enclose, which would create the Florida Frontiers Historic Riverway. This legislation is similar to legislation which I have had pending now for several years. I

believe that action will be taken in the current year on my bill which would create a national park of the entire Nassau River Valley of approximately 80,000 acres, most of which would be marsh land.

[NOTE.—The bill referred to is H.R. 1719, 93d Cong., 1st sess., Jan. 11, 1973, "To authorize the establishment of the Florida Historic Riverway, and for other purposes."]

The National Park Service and the Interior Department have approved the concept of my bill and have suggested an appropriation of approximately $5 million which would cover one half of the cost of this project. The other half of the cost of the project would have to be secured through donations of land from public and private sources. I have received several offers of donations of large parcels of land from private sources, and also the State of Florida has indicated that they would be agreeable to donating their considerable land holdings in the area of the park.

I believe that the only way to preserve this area is through the creation of a national park. I would hope that when the committee submits its report on environmental problems in the State of Florida it will recommend the inclusion of the Florida Frontiers Historic Riverway as a vital environmentally sound measure. I very much appreciate your allowing me to testify before your committee.

PREPARED STATEMENT OF HON. BILL CHAPPELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I want to express my appreciation to you for this opportunity to express my views concerning the Federal Government's environmental policies as they affect Florida. But first, I also want to congratulate my colleague from Florida, the Honorable Dante Fascell, for encouraging this particular hearing and the Honorable Don Fuqua, also from Florida, and a member of the full committee, for his active role in these matters.

In announcing this hearing, the committee stated the purpose as being to determine if the Federal environmental policies are economically sound and efficiently operated.

It disturbs me to say I do not believe so.

This is not to say this committee and other committees in the Congress have been wasting money or developing inefficient programs. But I do suggest the present policies in force at the agency levels are ultimately going to cost the taxpayers millions of dollars more than they should and will, because they will be crash programs and, therefore, will be inefficient.

Let me cite some examples in my own Fourth District. I have had a committee advising me on environmental matters in my District. They have been most helpful to me and they have provided me sound guidance on this vital question.

After careful study of my committee's recommendations and after talking with many concerned citizens in my District, I have reached the conclusion we are doing far too little. It is more a matter of what we aren't doing than what we are doing.

A chief problem in my area is the residue of the Cross-Florida Barge Canal, halted by Presidential edict many months ago. This scar remains on the landscape of Florida, ensnarled in legal red tape, a threat to flood control, unusable in any form, and with no firm plans for its use. A final decision on this project must be made and we must get on with some kind of reclamation or construction work.

Beach erosion is a critical problem all around Florida. Along Jacksonville Beach, what once was a broad, white beach, is now a pile of concrete chunks thrown along seawalls to try and stop further erosion. The situation is critical, and will get more critical the longer we wait. Erosion is filling the inlet channel at St. Augustine. Erosion is eating away at Daytona Beach. The problem of erosion is creeping south along the Florida east coast and it will not be too long before our beaches are destroyed.

We need a model rivers project along the St. Johns River, one of the unique rivers in the world. It must be saved from further pollution, but we can't get the money to do it.

I have been working to safeguard existing wild lands by the establishment of two national parks in my district, but funds are not available for land acquisition.

Florida and the Nation would benefit from additional research dollars to see if a solution can't be found to eliminate agricultural pollution flowing into our lakes and streams.

Federal curtailment of funds to assist communities in water and sewage treatment facilities threatens to bring about additional raw dumping into our waterways.

Proposed regulations rumored about to be recommended by the Waterways Commission would take the Federal Government out of the waterways business and leave the burden to local communities already hard pressed to find the money to do that which they now must do. This approach to waterways would set this Nation's water areas back a hundred years, threatening navigation, flood control, channel maintenance, and new construction of waterways projects.

What I have presented here is a shopping list of what I feel is needed just in my District. It has been general in nature and many projects—including the Oklawaha River—have been glossed over, in the cause of brevity; but it will take a lot of money and a lot of planning.

Finally, Mr. Chairman, I believe we also need in America a public confidence in our pollution programs. At present, there is great suspicion on the part of the public that the Federal Government either doesn't know what it wants or doesn't know how to get it. A case in point: recently, it was rumored that a submarine base might be constructed in Florida, although ultimately it was announced for the State of Washington.

But during the rumor stage, concerned citizens rightfully and properly expressed their deep fear that the facility would do violence to the environment. Hundreds of them wrote to me, and when I attempted to assure them the law would be followed, they expressed their concern this wasn't good enough.

We need a Federal policy which gives the people the confidence they should have in their Government. We do not now have it.

We are nearing the time when our environmental problems will outstrip our ability to cope. This is penny wise and pound foolish. In the interest of economy, we fail to spend $500,000 dollars today, knowing the same program will cost us $5 million in a few years as a crash program.

This is not the kind of economy we need. I believe the American people want their beaches saved, their park system enlarged, the scars across the land healed, their waterways maintained and safeguarded, their rivers clean and clear, and their drinking water pure.

This is what every member of this committee would like to see, I'm certain.

But, to restate my earlier position with regard to the economic soundness and effectiveness of our present programs, I am alarmed at what is taking place in the environment, and I congratulate again the work of this committee in coming to Florida to see for itself.

I am now hopeful we can proceed to the job at hand in the Fourth District, in Florida, and in America.

Mr. REUSS. Our first panel of witnesses is Hon. John B. Orr, Jr., mayor and chairman of the board of commissioners, Dade County; Garrett Sloan, executive director of the Miami-Dade Water and Sewer Authority, and their associates.

Mayor Orr and your associates, would you please come forward?

Mr. CARTER. My name is Dennis Carter. I am the special assistant to the county manager. Mayor Orr is detained. He was at a radio station at 7 o'clock this morning, in Dania, which is north. We expected him to be here at 9 o'clock, but he has not arrived yet.

Our format, gentlemen, was that Mayor Orr was to make the opening remarks and sort of give you an overview of the problems that we have in Dade County concerning our environment, followed by staff presentations by Mr. Allan Bly, who is our assistant planning director; Mr. Colin Morrissey, who is our pollution control director; and Mr. Garrett Sloan, who is the director of the Miami-Dade County Sewer Authority.

Mr. REUSS. We understand perfectly Mayor Orr's busy schedule, and if you think that that is the way that he would want it, would you be good enough to begin?

Mr. CARTER. The mayor will be here momentarily.

Could we start with the staff presentations and then let the mayor wrap it up when he arrives?

Mr. REUSS. Fine.

Incidentally, we have most comprehensive statements from the mayor and from others on the panel. All of them, under the rule, without objection, will be received in full in the record. Therefore, the witnesses may proceed in their own way, either reading, summarizing, or going beyond in any way that you think would be helpful.

STATEMENTS OF HON. JOHN B. ORR, JR., MAYOR AND CHAIRMAN OF THE BOARD OF COMMISSIONERS, DADE COUNTY, FLA.; DENNIS CARTER, SPECIAL ASSISTANT TO DADE COUNTY MANAGER; REGINALD R. WALTERS, PLANNING DIRECTOR, METROPOLITAN DADE COUNTY, REPRESENTED BY ALLAN BLY, ASSISTANT PLANNING DIRECTOR; COLIN MORRISSEY, DIRECTOR, DADE COUNTY POLLUTION CONTROL; GARRETT SLOAN, EXECUTIVE DIRECTOR, MIAMI-DADE WATER AND SEWER AUTHORITY

Mr. CARTER. I would like first to introduce Mr. Allan Bly, who is the assistant planning director for Dade County and who would like to speak on the planning functions involved in our environmental problems in Dade County.

Mr. Allan Bly.

Mr. BLY. Mr. Chairman, members of the committee, and our distinguished Representatives from Dade County, I am substituting for Mr. Reginald Walters, who had hoped that he could be here this morning, but is upstairs in a court session at this time. I would like to go ahead and read for you the statement that Mr. Walters had prepared for this hearing. I have copies of it here that I will give to you.

Mr. REUSS. Mr. Bly, please proceed reading Mr. Walters' statement.

Mr. BLY [reading Mr. Walters' statement]. Of the few minutes allotted to me here today, I want to spend less than 30 seconds to confirm that environmental problems, without a doubt, rank among Dade's uppermost concerns. If the very fact of this hearing today is not evidence enough of the intense local interest in conservation and natural resource matters, the testimony of the 35 or more witnesses who appear before you during the next 2 days will remove any lingering doubts that we are deeply concerned about the future of our environment.

In keeping with the stated scope of this hearing, I will address myself to the local environmentally related planning activities and the problems and progress of their several levels. Especially do I want to speak to the interjurisdictional and intra-agency roles in these processes.

Since its inception in 1960, the Metropolitan Dade County Planning Department has been charged with the responsibility of preparing plans to guide the overall growth of this, one of the Nation's fastest growing metropolitan areas. In 1965, Dade became one of the first metropolitan communities to adopt a land use plan, a plan seeking to accommodate the projected growth with basic consideration of many of the then known environmental parameters.

We are currently reviewing and updating this plan to make it more responsive to changing community conditions, aspirations, and understandings. In each of these kinds of change, environmental considerations are at the forefront. One of the six citizen task forces that counsel the Dade County Planning Advisory Board in this

process is devoted exclusively to identifying environmental issues, goals, objectives, and policies that will be used to guide staff in the subsequent plan update process. I submit for the record a copy of the background paper this task force has used in its deliberations. I believe you will find it a good layman's guide to conservation and natural environment matters in this community.

Mr. REUSS. Without objection, it will be received in the record.

[NOTE.—The report referred to—"Comprehensive Development Master Plan for Metropolitan Dade County: Background Paper for the Advisory Task Force on Environment," prepared by the Metropolitan Dade County Planning Department, January 1973—is in the subcommittee files.]

Mr. BLY. It touches on virtually all of your identified topics of concern for this hearing. Also noteworthy is the fact that in this process the community is being asked to confront the issue of the overall environmental impact of continued growth.

In an effort to provide the information necessary to evaluate these implications, a complementary effort is underway to establish a file of current environmental data. This project has found that much research has been completed or is ongoing. However, it is clear that many of the most fundamental impact questions remain unanswerable. To be able to adequately understand and monitor the relationships of urban growth to the natural environment will require research that can come only with coordinated, multilevel funding. Only then will we begin to know as much about the environment at the end of a 100-foot storm drain, a 2,000-foot disposal well, or 5,000-foot ocean outfall, as we know about environmental conditions at the end of a 240,000-mile Moon shot.

Dade completed its first water and sewer master plan in 1961. However, it was not until 1966 that the board of county commissioners called for meaningful coordination of these systems. At this time they established policies calling for the unification of our more than 50 water and sewerage systems through county acquisition of private facilities and cooperation with municipal services. Later, to implement those policies, the commissioners allocated $40 million for matching State and Federal funds in the purchase and construction of the components. Shortly thereafter, they also authorized the necessary updating of the overall plan. With these events, in 1970, Dade County made a significant commitment toward the solution of many of its water quality problems.

Before the much needed system improvements or planning could begin, the then Governor called the first of several Federal-State enforcement conferences to consider pollution problems of the navigable waters of Dade County. The conferees held three meetings between October 1970 and July 1971, which resulted in a series of directives to the local community to:

(1) Stop waste discharges to the inland canal system by January 1973;

(2) Start secondary treatment on ocean outfalls and eliminate waste discharges to lower Biscayne Bay by January 1974; and

(3) Develop a program for the elimination of urban area septic tanks and a master plan for the abatement of pollution.

These directives had a profound effect on the county's proposed pollution abatement programing and planning and Dade's staff and

consultants set about in earnest to adjust the approaches and schedules. In January 1971, the county presented its action plan for pollution abatement to the conferees and in May an amended supplement to the 1961 "Metropolitan Plan for Sanitary Sewerage." While the conferees were preparing to provide general support for the supplement, as an interim guide, local concern arose when one municipality found a proposed regional waste water treatment facility too close, while another city complained that a similar facility was too distant—an example of some of the local coordination problems.

Finally, in June 1971, EPA approved the $147,000 planning grant requested 4 months earlier. In combination with a previously authorized $68,000 HUD "701" planning-management grant, this approval provided the county with the necessary funding to prepare an interim plan by November 1971, and a complete plan a year later. In March 1972, 5 months after receipt of the interim plan, EPA found it not acceptable, having not given adequate consideration to alternative treatment and disposal systems and sufficient analysis of the impact on water quality as required by new agency policies. After considerable negotiation, the county agreed to perform the additional work and EPA agreed to a new schedule of June 27, 1972, for the completion of the interim plan and July 1, 1973, for the fully developed plan. Offering an added incentive to meet this new schedule, EPA withheld $25,000 payment for county planning work previously expended.

Over the next year as the planning progressed, the guidelines continued to change. For example, EPA placed increased emphasis on analysis of waste water reuse and, for a brief interval, sought storm water treatment consideration.

On schedule—June 25—the county submitted to EPA the final draft of the interim water quality management plan, and, in September 1972, sent the environmental assessment statement. The complexity of the coordination problem of producing such a plan can readily be imagined by scanning the document's list of participants which includes 23 agencies and organizations—3 Federal, 3 State, 12 county, and 5 municipal—and by reviewing the 300-page transcript of the testimony presented at the public hearing held by the planning advisory board.

In November, the citizens of Dade County approved another $50 million in bonds to help implement the interim plan proposals.

With the understanding that EPA considered the interim plan a sound basis for the final plan, and that they concurred with the approach to the completion of the plan as late as February 1973, Dade County staff and consultants completed the first draft of this latter document in March of this year. Last month the county was informed by EPA that substantial revisions and additions to the final plan would be necessary, based on new policies calling for more cost-benefit analysis and plan phasing. Most disturbing was a request that the plan adhere to existing Federal funding limitations. While agreeing to the first two requests, county staff and consultants took the position that contingency plans for various funding situations should not be a part of the plan, but rather of the subsequent implementation program. In support of this position, during the interval that it took us to respond, a major national court decision significantly altered the potential Federal funding situation. Unfortunately, the same preoccupation with present Federal funding levels seems to have

been a strong consideration in EPA's preparation of at least one of the recently released environmental impact statements on the county's plan for three regional waste water systems.

As County Manager Goode stated in his letter of May 16, 1973, to the regional EPA office, we will submit the final draft of the Dade County water quality management plan on or about July 1, and will immediately thereafter begin to prepare a work program for the preparation of contingency programs for various levels of local, State, and Federal funding. This approach, we are confident, will provide the plans and programs for the most effective way to meet the pollution abatement requirements of present laws, regulations, and the directives from the Federal-State conferees. We trust this will meet the administrative requirements of EPA. We have yet to hear to the contrary. As Mr. Garrett Sloan will mention in his statement, we hope that shortly after the submittal of the final plan, Dade County will be permitted to begin construction of the critically needed facilities which, in many cases, have been funded and which it has been ready to build since 1970.

I have given you my accounting of some of the difficulties encountered in our water quality planning processes, not seeking to make recriminations, but rather with the trust that we have virtually completed the effort and can reflect back on it in a manner such that other local, State, and Federal agencies who are still underway in such planning efforts can learn from our experience. I believe our final plan will be a good one and that, for the most part, it is technically better because of the delays. I further recognize that it is difficult at all governmental levels to make and live with decisions on matters so subject to daily disclosures of new facts and fears. Yet, during these delays a lot of local environmental problems have gone unchecked. Yesterday, as I reviewed the completion schedule with the planning advisory board in preparation for their hearing on the final plan, I was reminded how difficult it is to satisfactorily explain the many delays to a local community which has been ready to act for several years.

My recommendations for changes at all levels that would hopefully avoid some of these difficulties are basic, and obvious:

First, provide funding for the research that is necessary to better define environmental planning parameters and alternatives.

Second, at this formative phase in the state of the art of environmental planning, allow for necessary locale-by-locale variations in approaches and encourage multijurisdictional participation in detailing the planning work program.

Third, review with other jurisdictions planning policies prior to enactment and notify these jurisdications of new policies immediately after enactment.

Fourth, adequately fund the agreed-to-planning process, and the planners to encourage them to stay with the project.

Fifth, provide for initiation of pollution abatement projects as soon as the planning effort has demonstrated their desirability.

I want to thank you for your interest in Dade County's problems.

Mr. REUSS. Thank you, Mr. Bly.

Mr. CARTER. Mr. Chairman, if there are no questions of Mr. Bly, the next speaker will be Mr. Colin Morrissey, who will speak on water pollution in Dade County.

Mr. REUSS. I think we will withhold our questions until all of you gentlemen have educated us, and then we will examine you as a panel.

Mr. CARTER. Mr. Morrissey.

Mr. MORRISSEY. The first conference of Federal and State enforcement officials on October 22, 1970, was called by Governor Kirk to discuss water pollution problems in Dade County and necessary corrective measures. The conclusions and recommendations of the conferees were received by a new county manager and a new pollution control officer who took immediate action to implement them, even though the engineering community warned that the deadlines were unrealistic and the direction set by the recommendations was contrary to the previous policy requiring all existing sewage treatment plants to provide tertiary treatment.

A Dade County ordinance, adopted early in 1970, called for plans to be submitted by July 1, 1971, indicating that each sewage treatment plant would meet tertiary standards of treatment by January 1, 1973. These deadlines were considered reasonable. However, the directives of the conferees to phase out existing plants and ban all canal discharges after January 1, 1973, required modification so that only new plants were required to provide tertiary treatment.

Nevertheless, to implement the recommendations resulting from said conferences, the following actions were initiated:

First, an active enforcement program was commenced. Since the first enforcement conference and through mid-May 1973, some 118 water and 61 air pollution court cases were prosecuted, resulting in the collection of over $44,000 in fines.

Second, a Dade County water and sewer authority was established to construct and operate the proposed regional facilities.

Third, the "1961 Master Plan for Sanitary Sewerage for Metropolitan Dade County" was completely revised and updated.

Fourth, a $500 million bond issue for capital expenditures was recently placed on the ballot and approved by the electorate. Four of these projects included therein were $50 million for the construction of sewerage facilities; $50 million for solid waste disposal; $132.5 million for a mass transit system; $83.8 million for park facilities resulting in a total authorization of $316 million to improve the environment of Dade County.

Fifth, in compliance with the conferees' recommendations to reduce the number of small package sewage treatment plants and remove effluent from the inland canals, a program was undertaken to phase out such plants. As a result 32 of these plants that had been discharging their final effluent into inland canals were phased out.

Furthermore, since the enforcement conferences, no plans have been approved for new plants discharging effluent into inland canals.

Over 2½ years have elapsed since the first enforcement conference. During this time, significant delays have been encountered in improving the quality of Dade's waters. These delays have been primarily due to difficulty in obtaining Federal funding, prolonged periods of time necessary for Federal approval of plans for new sewerage facilities, and the effect of citizens' reactions to various sewerage projects and facilities, especially when they were located in their own neighborhood. Also, further delays can be expected if the abrupt change

from ocean outfall disposal to deep well disposal, which has been suggested in the most recent version of the Federal impact statement, is made a requirement for final approval.

At this point we are greatly concerned with the possible effects which might occur as a result of any additional delays in carrying out the master sewer plan for Dade County. Many serious problems have already developed due to the delays encountered in completing regional collection systems and treatment plants. One such problem has been the proliferation of package sewage treatment plants. Approvals for the construction of over 120 new package plants have been given since December 1972.

Another problem is the increased dependence on septic tanks in areas without sewers which has resulted in their greater numbers and prolonged use. Furthermore, the natural population growth has resulted in an increase in the total flow of sewage plant effluent from those plants still discharging their effluent into canals. The same inevitable increase in sewage flow has generated a potential health hazard due to possible rupture of sewer transmission mains which are approaching or exceeding design capacity in certain areas. In order to prevent such consequences, building moratoriums have, of necessity, been imposed in many areas of the county.

With respect to air pollution, the primary contributing cause is known to be the automobile. The solution is a mass transit system with reduced emphasis on roadbuilding and expressways. We must depend on the Federal Government to take the most expeditious steps to improve techniques to reduce auto emissions.

Concerning solid waste, the approval of $50 million in county bond funds will result in constructive measures. However, again we are dependent on the Federal Government to increase expenditures for research and to develop improved means of solid waste disposal.

Finally, to assist in the abatement of pollution on the local county level we urge the Federal Government to utilize all possible means to expedite the processing of impact statements, to establish better communications with local officials, and to remove the apparent roadblocks to financial assistance. Also, research and development must be given highest priority to improve techniques in wastewater recycling, solid waste disposal, storm water recovery and reuse, reduction of auto emissions, and disposal of industrial wastes.

In summary, it is apparent that while a Federal hand was helpful in prodding our program for development of a regional treatment system, that same Federal hand now seems to be a delaying force preventing completion of the goals we have worked to achieve these past few years.

We must have adequate sewage treatment systems, and we urgently need research to answer the many difficult questions facing our environmental planners—questions such as how to prevent further depletion of our water resources by safely recycling treated sewage. Any assistance you can give us in resolving these problems will be of tremendous benefit to the citizens of this community.

Mr. Reuss. Thank you.

Mr. Carter. Mr. Chairman, members of the subcommittee, the next speaker will be Mr. Garrett Sloan, who is executive director of the Miami-Dade Water and Sewer Authority. Before he speaks, I would just like to give you a little picture of the physical setup in Dade County, organizationalwise, on the sewer authority.

This authority went into effect on April 1 of this year. Previously, Dade County had its own water authority with countywide responsibilities. The city of Miami, which is the largest utility in Miami, providing more than 70 percent of the water to Dade County, more than probably half of the sewage disposal to Dade County, and was operated separately by the city of Miami.

In the spirit of cooperation and trying to do a job on a regional basis, the city of Miami and the county agreed to merge these two functions into one authority. As of April 1 of this year, we now have a combined Miami-Dade Sewer Authority.

Mr. REUSS. Thank you. Mr. Sloan, would you proceed?

Mr. SLOAN. Yes, sir.

Mr. Chairman and members of the committee, whether our pollution control efforts sink or swim depends in great measure on policies set by Congress and their implementation by EPA. The Miami-Dade Water and Sewer Authority provides water and sewer service to many areas of Dade County, either on a retail basis or by furnishing services to other public utilities. It has approximately 104,800 retail water customers and 41,400 retail sewer customers. It supplies approximately the same amount as sold at retail on a volume basis for resale. Sewer service is less than half of its water service, but the gap is closing rapidly. Other statistics concerning authority activities and facilities have been submitted to you in writing in response to the subcommittee's request.

[Note.—The data submitted by Mr. Sloan are printed in app. 11, pp. 2441–2457.]

Mr. SLOAN. The authority and its predecessors have been making a concerted effort to provide sewer service on a regional basis, in accordance with the "Metropolitan Dade County Interim Water Quality Management Plan" completed in June 1972. The required environmental assessment of the plan was prepared quickly and submitted last September. Only 3 months later, the "Environmental Impact Statement on Methods of Treated Wastewater Disposal in Southeast Florida" has been prepared and accepted by all local, State, and Federal agencies. The drafts of the environmental impact statements for the three regional wastewater treatment plants have also been completed by EPA, and acceptance of the final draft is anticipated in the near future.

The "Interim Water Quality Management Plan" has proposed the division of Dade County into four large regional wastewater districts, each with its own treatment plant. Estimates of the costs for the first three districts to be constructed before 1985 have been prepared based on current prices and have been included in the proposed 5-year capital improvement program of the authority's sewer division in anticipation of Federal financial assistance under Public Law 92–500, as follows:

First, the North Dade District: These facilities include an 80 million gallon per day regional wastewater treatment plant designed for 90-percent biochemical oxygen demand, and suspended solids removal, a 90-inch ocean outfall, approximately 23,000 feet in length extending from the plant and discharging into 90-feet depth of water. The total estimated project cost is $76,950,000.

The Central Dade District, which includes Miami and will include Miami Beach: The existing treatment plant at Virginia Key will be

utilized, which will require major additions and expansions. The existing 90-inch ocean outfall will be extended by a 120-inch pipeline to 18,000 feet offshore at a depth of over 90 feet. BOD and suspended solids removal will be increased to 90 percent by additions to the existing plant, and a new 55 million gallon per day plant will be constructed to increase the total capacity to 115 million gallons per day. The present estimated project costs are $71,500,000.

The South Dade District: A new 50 million gallon per day wastewater plant will provide 90-percent removals with effluent disposal by 3,000-foot deep wells into the highly saline boulder zone of the Floridian aquifer. The estimated project cost for these improvements is $45,680,000.

The West Dade District: A wastewater treatment plant of 80 million gallons per day will be constructed west of Miami International Airport in about 1985 to receive wastewater diverted from each of the other three districts, which is free of chloride or saltwater contamination. This plant would apply advanced waste treatment processes so that the effluent could be discharged to the ground water as a conservation measure.

For the first three districts, which are called for between now and 1985, treatment and disposal facilities alone will require approximately $194 million. In addition, transmission mains and pumping stations will require $106 million. Thus, the total improvement program costs to meet estimated 1985 needs will amount to $300 million.

Several relatively small projects were begun prior to the preparation of the master plan and are necessary to the total project. These are in the amount of approximately $10 million and were eligible for Federal funds under the then current Environmental Protection Agency program on a basis of 33 percent of total project cost. To date, the total estimated cost of all projects, either underway or completed, is $310 million. Almost all of this entire amount is eligible for Federal funding. Recently, we were encouraged by the inclusion of two of our projects in the Florida priority listing for 1973, for grants in the total amount of $12,975,000.

I would like to comment here about this approximately $13 million. This is the first firm commitment by EPA toward the basic $300 million that we are seeking. Actually, the $300 million is the total project cost.

Conclusions: (1) At the present time, the grant program would indicate that of the total cost of $300 million for the projects remaining to be done, approximately $219 million, or 75 percent, would be the amount of Federal grants to be anticipated under Public Law 92–500. The balance, $81 million, would be obtained from local funds such as cigarette tax bond funds, which are already on hand, and general obligation bonds already approved and authorized by county ordinance.

Thus, it becomes essential that Federal grants for construction in the amount of 75 percent of project cost be made available to the authority without delay. In retrospect, Dade County has had some $32,500,000 of local funds on hand for starting projects since early in 1971.

(2) Our experience in seeking aid for the early components in the Central Dade District improvements has been one of extreme frus-

tration. In an effort to comply with the National Environmental Policy Act of 1969, the State and Federal agencies with which we dealt have shared our disillusionment by various and changing interpretations of the act. Direction and instruction were sought, but were often voided by changes of policy or personnel.

The Federal grant program is encumbered by the necessity for an applicant to channel all documents with many copies to local, State, and Federal agencies. Only in rare cases have all copies survived these procedures without loss, requiring a new start after long delays.

For example, the process requires approvals from 10 agencies, as follows: (1) the County Planning Department; (2) the County Pollution Control Department; (3) Regional Office of the Florida Department of Pollution Control; (4) Central and Southern Florida Flood Control District; (5) Division of State Planning, Florida Department of Administration; (6) Florida Department of Health and Rehabilitative Services; (7) Board of Trustees of the Internal Improvement Trust Fund, State of Florida; (8) Florida Department of Pollution Control; (9) Florida Department of Natural Resources; and (10) Florida Department of Community Affairs.

Following the receipt of all approvals, an application is finally ready for forwarding to the Atlanta regional office of the Environmental Protection Agency by the Florida Department of Pollution Control.

(3) After 3 years of diligent efforts, we have reached a point where the procedural delays that the National Environmental Policy Act and Public Law 92–500 have created must be terminated to make way for the construction of the long overdue wastewater plants and effluent disposal facilities to serve Dade County.

Your assistance toward supporting our plan is earnestly solicited on behalf of our citizens. Please stop the endless flow of new procedures and directives. We can treat wastewater and protect the public only if we are free to proceed.

Thank you.

[Mr. Sloan's prepared statement is printed in app. 11, pp. 2441–2457 of these hearings.]

Mr. REUSS. Thank you, Mr. Sloan.

Mr. CARTER. Mr. Chairman, Mr. Orr is still some 15 or 20 minutes away. To retain the continuity, if it is agreeable with you, I would like to read into the record the official statement of the county commission and the county administration which summarizes what has been said. I would think by that time they would be here and they could make their statements to you.

Mr. REUSS. That will be fine.

Mr. CARTER [reading Mayor Orr's statement]. It is most appropriate and heartily encouraging to us that these hearings are being held here in Dade County. The need for proper environmental management is as urgent in south Florida as anywhere in the country. Meeting the problems of growth and environmental preservation is a responsibility shared by all levels of government and ultimately by all individuals in this country. I want briefly to present to you an overview of the problems we face and the action programs we are undertaking to solve these problems. Following my remarks, you will hear detailed testimony from Dade County staff members who daily confront environmental issues.

As you know, Dade County is one of the fastest growing areas in the country. Population increased more than 35 percent between 1960 and 1970. Climate, clean air, clean water, and beaches have traditionally been south Florida's primary attractive features. Growth has far outstripped the development of local services. It is ironic that this growth, which has been locally encouraged, has resulted in a marked deterioration of those very qualities which attract people to south Florida.

We are currently in the difficult position of having to provide services to catch up with 20 years of growth while planning and providing for continued growth.

I am not among those who believe that our problems cannot or will not be solved. The present Dade County Commission has taken positive steps to provide the necessary local commitment.

First, the people of Dade County, through a referendum, approved a building moratorium ordinance which allows us to halt development in specific areas while planning studies are completed. This tool has been utilized frequently.

Second, the commission has provided extra staff to our planning department to update the general land use master plan as quickly as possible. Accompanied by a minimum zoning code enforced county-wide, this plan will effectively control population density and the ultimate growth in Dade County.

Third, the voters of Dade County—with the strong support of the county commission, the county manager, and the community leaders—have approved $553 million in general obligation bonds to provide a decade of progress. More than $316 million of this total will contribute directly to environmental protection in the form of sanitary sewers, solid waste disposal, rapid transit, and development of parklands and open space. The decade of progress improvements program will total $1⅛ billion, including $780 million in anticipated Federal matching funds. Clearly, the Federal role in this process is critical in terms of funding and standards and guidelines.

The specific areas of environmental concern in Dade County include waste treatment and water pollution, air pollution, solid waste disposal, beach nourishment, dredge and fill, and the impact of a jetport facility.

In the area of sewage treatment and water pollution, we have recently merged the city of Miami and Dade County water and sewer systems under a single, unified Miami-Dade Water and Sewer Authority, a county agency, to manage our water and sewer programs and to oversee the implementation of the water and sewer master plan which will be completed by July 1, 1973. Fifty million dollars in bond money are earmarked for the development of regional treatment plants and transmission facilities. In addition, we have available $32.5 million financed through revenue bonds. We already have most of the local funding necessary for the $300 million dollar implementation of our master plan over the next 5 years. This fiscal year, we have received $13 million in Federal grants.

I might mention at this point that although we got $13 million, Tampa—which is about one-third the size of Dade County—received over $30 million.

During the coming year alone we will be ready to commit $129 million in Federal funds. The only way we can receive these funds is for the impoundment of EPA funds to be lifted. Responsibility for the impoundment lies with the administration, not with EPA. However, impoundments have caused EPA to tailor programs to funding levels. In North Dade, for instance, deep-well disposal was suggested because the development could be phased. An outfall which would be more suitable to the needed capacity would have to be constructed all at once, thus requiring greater immediate funding.

A second aspect to the Federal role in local water resources management is the establishment of guidelines for treatment levels and disposal techniques. As you may know, the required water quality master plans and the environmental impact statements thereon have delayed construction of major regional sewage facilities for the last 2½ years. Part of this delay has been due to indefinite guidelines issued by EPA. We agree that it is of substantial importance to choose a safe and effective program of managing our water quality needs, but we cannot wait any longer. I reiterate the importance of making available the funds already appropriated by Congress. Our facilities are now in the design stage, but we cannot let construction bids prior to the availability of Federal funds. We must proceed immediately to provide the facilities which were needed years ago.

There will be testimony during these hearings which will indicate that the water supply in Dade County is dangerously low. Provision of clean water is a problem of national proportions. I strongly urge funding of research and development programs to find practical methods of maintaining our water supply. In Dade County, for instance, it may be feasible to backpump treated drainage runoffs from our canal system into the Everglades. This would recycle some 15 annual inches of rainfall instead of running it into the ocean. Annual water consumption in Dade County is about 3 inches of rainfall per year. This and other techniques require research to facilitate some workable system in the near future.

Dade County has more cars per capita than any other urban area in the world Only the prevailing breezes have prevented us from suffering the smog inversions common to Los Angeles. By the way, that was not unique this morning. We support EPA efforts to encourage proper emission control standards. Locally, I believe we can have some impact by providing a rapid transit system which will be attractive enough to get people out of their automobiles.

We are fortunate in some ways to have encouraged the development of relatively clean industries. The automobile accounts for the obvious deterioration of our air quality in recent years.

I have noted with disappointment the Federal administration's recent statements concerning responsibility for solid waste disposal. I agree with the concept of local initiative and operation. What we need now is Federal funding of research and development programs. Ultimately, we need matching funds for the capital costs of implementing a proper solid waste disposal system. Dade County has allocated $50 million in bond money for this purpose. A comprehensive study has been completed.

I urge Federal legislation to assist in the development of regional solid waste disposal systems.

Beach nourishment is another problem which requires attention in Dade County. Planning for a hurricane prevention project between Baker's Haulover and Government Cut on Miami Beach has been underway since the early 1960's. Recently agreements were reached between local agencies and the Corps of Engineers. The local share of funding is available in the amount of $9 million in bond moneys. However, Federal funds to begin the project have been impounded. I urge continued congressional pressure to overcome the impoundment of these funds.

A final issue at hand is the proposed jetport. A favorable environmental impact study has been completed on site 14 in North Dade. We are still deliberating alternatives to this site. As is the case with so many issues, a judgment must be made concerning the need for a jetport facility balanced against the environmental costs involved. Unfortunately, there will be costs involved. We can only use our best judgment to minimize the cost while planning for the future needs of the residents of Dade County. The longer the decision is postponed, the greater will be the eventual disruption.

In closing, let me reiterate our demonstrated concern as local elected public officials for an environmentally sound urban development. The continued cooperation of Federal agencies is necessary to the success of our long-range regional systems development. We have in recent months made the strongest local commitment in our history to solving our environmental problems. The county commissioners will tell you in more specific detail how those commitments relate to the Federal agencies and programs to which these inquires are directed.

Gentlemen, you have heard from the four panelists, and with that, we will conclude the remarks which were prepared by Mayor Orr, and which I presented on his behalf, and represent the official position of the county commission and the county administration. We will be glad to answer any questions you have.

Mr. REUSS. Thank you very much for your able presentation of the county's position.

We will start the questions. When Mayor Orr arrives, he can take his place and we will welcome him then.

At this time I would like to turn the hearing over to our colleague, Congressman Fascell.

Mr. FASCELL. Thank you, Mr. Chairman.

Mr. Sloan, just where are we now on the funding of the water quality management plan?

Mr. SLOAN. We have thus far some $13 million that we understand is being allocated to us in the 1973 funding.

Mr. FASCELL. Excuse me. Let me stop you right there.

You understand that you have some $13 million going to be allocated in the 1973 funding, which does not really tell me anything.

Mr. SLOAN. Why I word it that way——

Mr. FASCELL. Which means you do not have it and you are not sure you are going to get it.

Mr. SLOAN. Our projects have been shown on a list and the sums of money are within the $72 million that we have been told is allocated to the State of Florida for the 1973 funds. We do not have a formal

offer from EPA in hand at the moment. Normally, we get a formal offer. Thus far we have not received it.

Mr. FASCELL. You have not received anything. It would come from the regional office?

Mr. SLOAN. Yes. It has not yet arrived.

Mr. FASCELL. You say that you have seen that two of our projects are on a priority list?

Whose priority list?

Mr. SLOAN. This is the State of Florida's, jointly EPA's and Florida's, priority list.

Mr. FASCELL. Agreed upon priority list?

Mr. SLOAN. I have a copy of it in my office. It was made public on April 17 at a meeting of the Florida Department of Pollution Control in Tallahassee.

Mr. FASCELL. A State list. Dade County has only two projects for fiscal 1973 funding.

Mr. SLOAN. That is right.

Mr. FASCELL. There is no list that you have for 1974 priorities?

Mr. SLOAN. That is correct. We expect such a list to be made available by July 1 of this year.

Mr. CARTER. Mr. Fascell, if I might expand a little on this, Dade County has come up with its local share of money at a great sacrifice. We sold $32.5 million worth of cigarette tax bond money for water and sewers that we could have used in other areas. Dade County residents voted $50 million of their tax money as the local share, and we have $82.5 million of local funds to fund a local project of $32 million—a 5-year program. This will all have to be committed within the next 2 years. We are not waiting on EPA and their allocation of funds. We have proceeded with the design of all of our major regional facilities, including our ocean outfall. We just cannot afford to wait. We are proceeding on this.

Our problem is, we do not know where the money is coming from that we are eligible for. Let me make this statement if I may: The total amount allocated to the State of Florida this year is $72.6 million. This is with the impoundment. Without the impoundment, Florida would have been entitled to $181 million.

The total priorities which Mr. Sloan referred to, which I understand were prepared by EPA but were distributed by the State Pollution Control Department, is $122 million.

Now, completely omitted from that list of priorities—if that $122 million were available—is any money for the North Dade area. In the North Dade area we have a complete building moratorium unless the facility is large enough that it can construct its own package sewage treatment plant. That North Miami ocean outfall is at its hydraulic peak. It can rupture any day. We are having to do such things as to revert back to a plant that had been basically phased out, and reactivate it to take the load off the line.

We are very reluctantly building a sewage holding facility in the Gratigny Park area to relieve 2 million gallons of air pressure off that line. The problem is getting worse. You cannot halt all construction. Otherwise, we would have economic chaos.

The point I would like to make is that even with $122 million that has been submitted on the priority list, not one nickel is in there for

North Dade. We have the outfall under design and we can have the treatment plant ready for construction within a 12-month period.

There is also a statement made that, if the impoundment were lifted, Florida would have a $60 million surplus. The difference between $122 million and $181 million that would be available, I say to you today that Dade County can commit every bit of that surplus if it were available. We are not waiting. We have moved ahead with design. We have completed our master plan. Within 12 months, we will be ready to let contracts for construction.

The time is critical that funds be available so that we can get ahead with this program.

Mr. FASCELL. I agree with all of that, Mr. Carter. As you know, we have been critical of all the impoundments to any of these funds, but we do not seem to have much control over it.

The point that I was getting at is that here we are in Dade County, but we do not even know who makes up the priority list and who decides when the allotments are going to be made and how much they are.

If the State has any decisionmaking power at all with respect to priorities, then it seems to me we had better do something at the State level and then try to get in on the EPA priority list in fund allocation—that is, if only two of the projects in Dade County are in the 1973 funding and we do not know anything about 1974. I assume by normal administrative process that somebody is now making up a 1974 priority list. We do not even know who that is, as I understand it.

I understand also in the testimony that EPA is sending out new guidelines with respect to tailoring projects or programs where you are practically at the construction point because funding allocations are insufficient.

I understand you to say that in North Dade they are talking about going to something that can be phased-in construction rather than a total cost for an outfall.

Is that correct?

Mr. CARTER. That is true.

Mr. FASCELL. That is a rather recent change.

Mr. CARTER. That is absolutely correct. Our environmental assessment statement provided for an 80 million gallon a day sewage treatment plant in the North Dade Area with a 90-inch ocean outfall. We base this assessment statement on the needs of Dade County and part of the inspection, dollars be damned. Whatever it takes, we will pay our share.

Evidently because of the restraints on funding, EPA has tailored its environmental impact statement, based upon dollars available, and they suggested instead of building the 80 million gallon a day plant that only a 40 million gallon a day plant be built initially, with the use of deep wells, and the existing North Miami ocean outfall. The problem is, by 1977 or when a 40 million or 50 million or 80 million gallon a day plant will be built, our needs will be in excess of 60 million a day. A 40 million gallon a day plant will not solve the problem. We will still have a proliferation of package plants throughout Dade County, and we will still have the same problems we have today.

Mr. FASCELL. How long a delay will there be in order to change plans to phased development?

Mr. CARTER. There will be a several years delay. Another consideration is that it is fiscally more expensive—it is cheaper to build one 80 million gallon a day plant than to build two plants.

Mr. FASCELL. The point is that the change of plans causes a stretchout in funding. This is an old gimmick. That is all that is involved here. You might as well lay it all on the table.

Has the county agreed to the deep well system?

Mr. CARTER. We have agreed to the deep well system in the South Dade area, provided that the deep wells are located east of the salt barrier dams, so there would be no possible intrusion of salt water in our fresh water supply.

Mr. FASCELL. I thought the problem was not the intrusion of salt water, but the efficacy of deep well disposal into the aquifer.

Mr. CARTER. I do not believe that is true, but I believe Garrett Sloan would be more qualified to answer that.

Mr. FASCELL. I would like to know whether there is any dispute, question or any reservation by the county engineering department or anybody else in the county on the use of deep well disposal systems.

Mr. SLOAN. There is great personal reservation by many scientific people in this area, in the government of the county and affiliated organizations in the community about whether deep well disposal is a long-term proper solution to the problem. However, two deep disposal wells are in operation now. One has been in operation almost 2 years with currently little problems except those experienced during the drilling period. During the drilling period, a great deal of salt water was wasted or allowed to flow because an artesian strata of brackish water was pierced in the drilling of them. It did damage the quality of our drinking water.

Mr. FASCELL. Excuse me for interrupting you, Mr. Sloan.

Are you telling me now that the county is ready to accept deep well disposal?

Mr. SLOAN. Only in the South Dade district, and only located east of the salt line.

Mr. FASCELL. Why those reservations?

One is salt intrusion. Why only in South Dade?

Mr. SLOAN. Because in the North Dade situation——

Mr. FASCELL. You already have an outfall.

Mr. SLOAN. We need a greater capacity, and we are accessible to an economic ocean outfall. We are close where we can discharge properly or in the conventional manner and where we have a full understanding of what we are doing. We realize that there are risks in the deep disposal wells. We are not entirely certain of it because after all, there has been only one in operation for less than 2 years.

Mr. FASCELL. In the county?

Mr. SLOAN. There is one situated at Snapper Creek, at Southwest 97th Avenue at Sunset Park.

Mr. FASCELL. How much is being discharged into that?

Mr. SLOAN. Something on the order of 4 million gallons a day.

Mr. FASCELL. Who monitors it?

Mr. SLOAN. There was a monitoring program which I believe has been discontinued. There is very poor monitoring of that well, compared to what is desirable from the standpoint of the general area.

Mr. FASCELL. What is contemplated would be discharged in the regional plant deep well?

Mr. SLOAN. Treated sewage.

Mr. FASCELL. How many gallons? You said 4 million at Snapper Creek?

Mr. SLOAN. Ultimately in south Dade it would be 50 million gallons a day. I would like to explain the reason for considering deep wells in south Dade.

It is a problem of being locked into an area geographically where there is not any other reasonably economical course of action. To discharge by ocean outfall would require that you cross Biscayne Bay through Elliott Key and extend on out through deeper levels of the ocean. That is at very, very great expense—$30 million or $40 million—and we have been prohibited from discharging sewage into Biscayne Bay. We also have been prohibited from discharging treated sewage into the canals or into the Everglades National Park. We agree with that recommendation of the Federal-State conferees.

Mr. FASCELL. Based on the state of the art and the restrictions given, what you are saying is you do not have any alternative except dumping it in the ground.

Mr. SLOAN. That is right.

Mr. FASCELL. Regardless of the risk.

Mr. SLOAN. Yes.

Mr. FASCELL. If any.

Mr. SLOAN. Yes.

We see great risk during the drilling of these wells in releasing uncontrolled amounts of salt water that can get into the fresh water aquifer which is our only water supply. We have nothing else. If we go east of the salt line to drill these wells, we can do it safely because if there is spilling of any salt water, it cannot damage anything because the groundwater there is already salty in those locations. That is our reason.

Mr. MORRISSEY. If I could expand on that, Mr. Fascell.

Regardless of the economic costs in south Dade, we would have to extend an outfall out from the mainland area 15 miles across what is now nearly virgin bay water and one of the only living reefs in North America. The construction of that outfall line, due to the dredging, would destroy that particular reef. Besides the economic considerations, we would do irrevocable environmental damage due to the outfall in south Dade.

At least, in essence, as Mr. Sloan said, we have no alternative other than the deep well. That same situation does not exist in north Dade. We do not have to accept the possible risk of the deep well in north Dade. We can go with an ocean outfall economically and reasonably in terms of any environmental consequences.

Mr. FASCELL. I was not suggesting an ocean outfall. How about advanced waste treatment?

Mr. MORRISSEY. We are not satisfied yet that we know enough about the ecological systems within the Everglades to discharge treated effluent. We would like to see a long term pilot study of the type of environment we have here in Dade County. There have been upland wooded areas that have practiced recycling, but nothing in the lowland wetland type areas that we have here in Dade.

Mr. FASCELL. Do we have enough scientific information about a 15 million gallon a day deep well disposal anywhere else?

Mr. MORRISSEY. We do have some information, but weighing all of the risks—balancing everything concerned—it seems that the best alternative is a deep well in South Dade; but by far and away the best alternative in North Dade would be the ocean outfall.

Mr. FASCELL. If a 50 million gallon a day disposal system is built in South Dade, would that be the first one in the county?

Mr. MORRISSEY. There have been others and there has been a history of a few failures and some successes. One of the principal reasons that we can accept a deep well here is that we do not have the geological faults that they have in some other areas.

Mr. FASCELL. Do we have the benefit of geological study?

Mr. MORRISSEY. I believe there might be someone here who can address themselves better than I later on.

Mr. FASCELL. Thank you. Mr. Chairman?

Mr. REUSS. Mr. Sloan, I believe that within the last 2 years Dade County has banned the sale of laundry detergents containing phosphates.

Mr. SLOAN. Yes.

Mr. REUSS. What has been the effect of this prohibition on the quality of your waterways?

Mr. SLOAN. Mr. Morrissey could respond to that a little better than I could.

Mr. MORRISSEY. The reason for the phosphate ban was that many of the inland plants that we have were discharging effluent into the canals and because a large portion of our population has septic tanks that receive no treatment with regard to nutrients, and we have very stagnant conditions at times within our canals which tend to concentrate the nutrients there.

The effect has been a marked reduction in the amount of phosphate that is going into the canal via the sewage treatment plants. It is a little early yet to demonstrate any significant effect on the canals. We have some preliminary results where some canals appear to be improving with respect to algal blooms. The ban has only been in effect a little over a year. The environment generally takes longer than that to respond.

Mr. REUSS. As you may know, our subcommittee has a particular interest in this problem. Would you, therefore, be able to file for the record such data as you have—and admittedly the time has been short—regarding, (1) the diminution of phosphate inputs from your sewage treatment plant; and (2) such fragmentary evidence as you now have of the effect of this dimunition on your existing canals?

Mr. MORRISSEY. Certainly.

[NOTE.—By letter of June 21, 1973, Mr. Morrissey responded to Mr. Reuss' request above. The 70 page canal data report for 1971 and 1972 referred to below is in the subcommittee files. The memorandum and data summary follow:]

METROPOLITAN DADE COUNTY,
Miami, Fla., June 21, 1973.

Re Phosphate ban.

To: Mr. Colin Morrissey, director.

From: Dr. David R. Barker, chief chemist.

The role of phosphorus as a key nutrient in the eutrophication of lakes and canals is covered in an Environmental Protection Agency report (Bartsch 1972). This report is probably the most comprehensive gathering of information on the subject available. A key point made in the report is that, of all the nutrients discharged by man into the environment, phosphorus is the most controllable.

An abstract of the above report is as follows:

"The process of eutrophication is a natural one, often accelerated greatly by man's activities that contribute nutrients. The key nutrient is phosphorus. Although there is no simple relationship, it is clear that increasing phosphorus content frequently leads to accelerated eutrophication. Of all important nutrients, phosphorus is most controllable.

"Sources of phosphorus include runoff from undisturbed agricultural and urban lands; waste from water craft; industrial and domestic wastes; biological sources; and precipitation. Also, the most important single source is municipal sewage, fortunately, the most potentially controllable of all inputs.

"Control efforts follow five basic directions: Limiting fertility; improving food webs; stimulating plant diseases and parasites; recycling nutrient-laden water to agricultural and forest lands; and using toxic chemicals to kill vegetation. Limitation of nutrients is the most desirable approach, particularly through curtailing phosphorus inputs."

Realizing that Florida has, in certain areas of the State, phosphate deposits which can potentially enrich selected canals in these areas, it becomes important to evaluate data from lakes and canals in Florida.

Brezonik *et al.* (1969) and Shannon *et al.* (1971) have conducted studies on many of Florida's lakes. In a recent study made of 55 North Florida lakes and their watersheds, Shannon and Brezonik concluded that while a trophic state was largely dependent on gross supplies of nitrogen and phosphorus, the phosphorus loading was the more significant limiting factor.

The short term effectiveness of the phosphate ban in Dade County is very difficult to evaluate in terms of aquatic weed growth and canal phosphate concentration levels. It must be remembered that these ecosystems are extremely complex and it cannot be expected that a drastic reduction of aquatic weeds or phosphate concentrations will occur within the duration of one year.

The effectiveness of such a ban is not expected to be apparent for at least two years after enforcement. Aquatic weed growths present at the commencement of the ban will continue to flourish at accelerated growth rates for quite some time after phosphate inputs are removed from the canals. Aquatic plants in the canals are known concentrators of nutrients. Thus, even in their decay, these weeds become the source of more nutrients for further growth. Sediments in the canals will also slowly release previous buildups of precipitated phosphates at undetermined rates. This creates further hindrance to the observance of any immediate changes in phosphate levels and effects produced by the ban.

Natural waters which are not eutrophic commonly have nitrogen/phosphorus ratios of 15/1 or greater. Eutrophic bodies of water commonly have N/P ratios of less than 6/1. This undesirable ratio shift is generally the result of added phosphorus from sewage outfalls. It is estimated (Bartsch, EPA, 1972) that of the quantities of phosphorus discharged into receiving waters in the United States in 1968 from sewered populations, about 60 percent is attributable to detergents.

Where an excess of phosphorus is added relative to nitrogen, then the phosphorus becomes no longer limiting in the system. This may trigger new productive responses in aquatic growth. Such a response may proceed until the exhaustion of nitrogen, some other nutrient, or an environmental shift impedes production.

Data Summary

Canal data—Dade County Pollution Control

Data from the extensive canal sampling program of Dade County Pollution Control Agency show an overall reduction in phosphate concentrations at the sampling sites from 1971 to 1972. There are 129 canal sampling stations, each being sampled once per month.

The average phosphate concentration dropped from 0.68 ppm to 0.36 ppm at these stations. Of the 18 canals, 10 showed lower overall phosphate concentrations, three were the same, and five were slightly more concentrated.

Sewage treatment plant data—Dade County Pollution Control

The outfall from sewage treatment plants has dropped drastically since the phosphate ban went into effect.

In January 1971, average phosphate concentrations in effluents from sewage treatment plants was 8.4 parts per million (76 plants).

In January 1973, the average phosphate concentration in effluents from sewage treatment plants was 3.0 ppm (20 plants).

Overall, then, a 64 percent reduction in phosphorus discharged from sewage treatment plants was recorded and attributed mainly to the phosphate ban. This figure of 64 percent correlates well with the 60 percent value given by the EPA (Bartsch 1972).

A complete set of our 1971 and 1972 canal data is enclosed (this will be approximately 70 pages).

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Bresonik, P. L., W. H. Morgan, E. E. Shannon and H. D. Putnam, "Eutrophication Factors in North Central Florida Lakes," Bulletin No. 134, Water Resources Research Center Publication No. 5. Florida Engineering and Industrial Experiment Station, College of Engineering, University of Florida, Gainesville.

Shannon, E. E. and P. Bresonik, "The Dependence of Lake Trophic State on Nitrogen and Phosphorus Loadings." Abstract, paper submitted for 34th Annual Meeting, American Society of Limnology and Oceanology, 1971.

Mr. REUSS. I have one other question on the subject of outfalls:

The Department of Interior, in its report to us on this area, states: "* * * in some cases ocean outfalls have not been extended far enough seaward to take advantage of the large flows of dilution water available in the Gulf Stream."

How far out is the Gulf Stream? How far do you have to extend your outfalls?

Mr. SLOAN. We feel that we get to the edge of the Gulf Stream from an effective standpoint when we get to greater than 100-foot depth. Off of the Virginia Key, it is about 3½ miles and it is about 2 miles off Miami Beach. In other words, 10,000 feet or so off Miami Beach, and in the Virginia Key it is about 18,000 feet off.

Mr. REUSS. Do your existing outfalls extend that far in all cases?

Mr. SLOAN. No. That is what we are trying to improve on and the North Dade outfall still has to go something like 1,200 or 1,300 feet further. It is almost far enough.

The Miami Beach outfall is out that far, but unfortunately it is discharging raw sewage. Our own outfall at Virginia Key is far short. It was designed on the principle that treated sewage would be discharged rather than raw sewage. It is only 4,500 feet offshore, and discharges at only 18-foot depth of water.

Mr. REUSS. Do your future outfall plans envisage compliance with that recommendation—namely, that you get out as far as the Gulf Stream?

Mr. SLOAN. Yes. sir. That is the basic intent of every outfall design—to get out there, not only to reach the proper depth, but to put in a system of diffusion to disperse the treated effluent so it is not concentrated at any one location.

Mr. REUSS. Mr. Gude?

Mr. GUDE. Thank you, Mr. Chairman.

I was very interested in the concern about solid waste disposal and share the frustration of the people of Dade County.

To this end, Congressman Ham Fish, of New York, and I have introduced legislation—and I believe we are the only ones to have done so—for a national approach to this problem by means of a public corporation to regulate solid waste back to useful purposes.

[NOTE:—The bill introduced by Mr. Gude is H.R. 3814, February 6, 1973, entitled "A bill to establish a national system of solid waste management."]

Mr. GUDE. Congress has taken little interest in this problem, and I deplore the fact that the administration has cut back funds for research in this area and has taken the position that it is a local problem.

I would like to ask several questions:

One, there was talk about backpumping of the water from the canals into the Everglades.

What would this do? Would this not cause a saline flow into the canals from the ocean?

Mr. CARTER. I will answer that briefly. The water that we are talking about in the canals is not saline water. It is fresh water. Our water from the canals runs from north, through the farmlands, through Dade County into the ocean; so we are talking about backpumping of fresh water. We have salt barrier dams at the end of these canals to keep salt water instrusion from going into our canals. The problem of backpumping without treatment is that there are nutrients that are primarily runoff from farms that go into this water.

So, the canal waters will still have to be treated, but at a much lesser degree than treating sewage—which also contains nutrients but a lot of other things, too. It is a less expensive job to treat canal water with nutrients than to recycle sewage water.

Mr. GUDE. There is no chance of saline intrusion from this?

Mr. CARTER. No.

Mr. GUDE. There was one point that is not clear in my mind. I think Mr. Sloan talked about the monitoring of the deep well disposal. Evidently this monitoring is not felt to be adequate, and it has also been stopped.

Did I understand that correctly?

Mr. SLOAN. That is correct. We had a pretty good program for a while. Of course, it did not show any changes taking place. It ran along for a year or a year and a half, just showing the ground water conditions around the wells to be more or less constant. We feel, of course, as a basic thing, that we should have good strong monitoring—especially with something as new as this.

This is something that I think should be handled strictly as a local situation in cooperation with the U.S. Geological Survey, which did the original monitoring. I do not personally feel that it is an obligation of the EPA or the Congress or what have you. I think this is something that we ourselves should do a little more investigating into. However, from an overall standpoint—especially with reference to recommending deep disposal wells for other locations such as Palm Beach County, Broward County, and on a general regional basis here—it certainly justifies a great deal of investigation.

There is continuous monitoring of the effluent quality going into the deep well. I do not want to mislead you in that regard. The quality of the treated sewage going down into the 3,000-foot well is monitored, and, of course, it shows the sewage to be of fairly constant quality. It is 90 percent removal treatment, activated sludge process.

Mr. GUDE. It has a secondary level of treatment.

Mr. SLOAN. And it is chlorinated.

Mr. GUDE. And chlorinated?

Mr. SLOAN. Yes.

Mr. GUDE. You do not have enough data to say at this point whether the deep well system is working satisfactorily or is not working satisfactorily?

Mr. SLOAN. I believe we have enough data to say that since the July 23, 1971, beginning of the first deep well operation—and we have not yet completed 2 years—that deep well has disposed of the sewage in a manner that has not caused any other problems that we know of at the present time.

We have no knowledge of any problems being created by the operation of the deep well, such as leakage from it or other problems. One thing should be made clear about the deep well. The pressure that you are pumping against is primarily just the friction losses of pushing the water down the pipe, as it were—and this is a half a mile long—and also the difference in weight between saltwater and freshwater. You have a back pressure of about 30 pounds just because you are displacing some heavy water with light water by comparison of the densities. So you always have to pump with a good bit of pressure to overcome the difference in weight.

Thus far, there has not been a buildup of back pressure in the discharge to the deep wells, indicating a clogging in the cavernous limestone areas in which the effluent is being discharged.

Also, I think it should be brought out here that the temperature of the water down at the bottom of the 3,000-foot hole is about 64 degrees, which is about the same temperature as the water is at that similar depth in the Gulf Stream. There is also a slight tidal motion in the deep well. In other words, the water in the deep well casing will rise and fall a little bit every day, indicating a dampened tidal reaction to the water down in that cavernous area.

So most of us speculate or hypothesize that the deep well cavernous area has water with identical characteristics to seawater due to the quality of chemical concentrations. We hypothesize that, through caverns, it is ultimately connected to the Gulf Stream or to the deepwater in the Atlantic.

Mr. GUDE. You feel there may be a flow from the deep wells eventually into the Gulf Stream, but also, at the very least, there is an interconnection.

Mr. SLOAN. Yes; it would have to be a very minor proportion when we think of the vast area we are talking about.

Mr. GUDE. One last question, Mr. Chairman.

In light of this, is there any difference in the geology or structuring as far as the deep well would be concerned in comparing south Dade to north Dade?

Presently the deep well you have is in south Dade; is that right?

Mr. MORRISSEY. That is correct, sir.

With the exception, perhaps, of the varying depths at which you would find the so-called boulder zone, there would be no significant geological difference between north and south Dade.

Mr. GUDE. Thank you, Mr. Chairman.

Mr. CARTER. There is one big point we ought to understand here as to why deep wells are in south Dade, and not in north Dade. First, we are talking about more sewage from the north Dade area—80 million gallons a day against 50 in south Dade. Second, the fact is that in

north Dade it is already highly developed. There is very little free land left. We do not know the safety of a concentration of, let's say, 80 million gallons a day of deep wells in a very confined area. In south Dade we have a different situation. You are talking about less sewage, and we have a lot of farmland out there that is still available for acquisition. So you can disperse your deep wells and spread them out so you do not have them all close together, because we do not really know how much volume this large cavernous area in the boulder zone can assimilate.

So, by spreading out the wells in the south Dade area where we do have the land, we think this is possible; but in north Dade we have a high concentration and a lack of land where you can have these deep wells. We very seriously doubt that you can effectively put all these wells on a small parcel of land.

Mr. GUDE. How much space do you need to drill a deep well? Do you need a large area in which to operate one in an area that is already developed?

Mr. CARTER. The problem of deciding is how far apart these deep wells should be. You cannot have them one next to the other.

Mr. GUDE. If you wanted to put a deep well in the middle of a residential area, how much disruption and industrial type development would you create in a neighborhood?

Mr. SLOAN. It is primarily only during the drilling period that there might be great disruption. That would last a year or a year and a half. I am going by the length of time that it took to drill two wells in the past. They were 16-inch diameter wells. They take up about 2 acres of land during the construction period. After the well is installed, it remains as a pipe coming out of the ground and a battery of pumps to pump the treated sewage into the well.

Mr. GUDE. I was very skeptical about these deep wells when I first heard about them, Mr. Chairman, but as opposed to putting sewage effluent in the ocean, I believe it should be carefully explored. I am sorry to take so much time.

Mr. FASCELL. Mr. Chairman, we have now been joined by our mayor who has traveled at great risk and at great speed to join us. We are delighted to have our distinguished mayor, Hon. John B. Orr, Jr., with us.

Mayor, your staff has done an admirable job in presenting your view and the county's views. They have testified that you have done everything that needs to be done at the county level, that all it takes is Federal money and a little cooperation to get this show on the road.

Mayor ORR. It is a characteristically thorough job by our county's staff, Mr. Fascell.

Mr. FASCELL. Mayor, we are delighted to see you. Your statement has been read and will appear in the record. We will be pleased to hear from you for whatever you would care to add.

Mayor ORR. I certainly will not bore you with the repetition of that, but, Chairman Reuss, I would like to welcome you non-Floridians to our area and assure you that if there is anything in the world we can do to make your stay here a more pleasant one, we stand ready to do it. Incidentally, in a couple of weeks I plan to have a very short but another delightful vacation in your area, Chairman Reuss. It is something I look forward to with great and pleasant anticipation.

Congressmen, as a native of this community I think I can say that geologically there is not nearly the difference between north Dade and south Dade as there is politically. I am confident that our long-time friend, Congressman Fascell, can testify to that effect. We in this area are mighty proud of him and the great service he has rendered. As a consequence of his decision to retire from the Florida Legislature and offer himself for the U.S. Congress, I became a State legislator and actually occupied the seat Dante had just left, and it was warm.

Mr. FASCELL. You went from one hot seat to another.

Mayor ORR. And we are confident, too, that Congressman Lehman is going to be the kind of fellow that will make this area proud of him and you will be delighted to work with him.

Mr. REUSS. If I may interrupt, we think that you are all very fortunate in the superb quality of the representation of greater Miami in the National Legislature.

Mayor ORR. We are certainly pleased with that.

Claude Pepper is an old law partner of mine. I would not want this opportunity to go without mentioning him and honoring the service that he has rendered to our area. We are so pleased that you are here in Dade County and conducting this hearing. I rather suspect that, over the long haul and in terms of progressive and positive impact on services to people, your hearing today will probably have a longer and better impact than perhaps some others that are currently being given more attention.

Mr. REUSS. I have no idea what you are talking about.

[Laughter.]

Mayor ORR. In any event, and without troubling you with repetition: Although I certainly do not have the technological information that our very capable staff has, if there are any questions that you would like to put to me about which you think I could aid you, I stand ready to do that.

Mr. FASCELL. Thank you, Mayor. We appreciate your appearance and also your making your staff available for the presentation, the preparation of the testimony, and answering questions—all of which they have done very capably.

We are certainly proud of your leadership. Dade County has a lot of problems. We all need to work together to help solve them.

One of the things that has already been suggested by your own staff is the fact that in just trying to clear some of these plans, it takes 10 local agencies—6 in the county and 4 at the State level. It seems to me that somewhere, between the county and State, we ought to be able to do something about that.

Mayor ORR. There is one other thing, and every time I get some opportunity to talk to some Congressmen, I try to make this point—that is, to remind you of the unique character of the government we have here. I have testified twice in the past 6 weeks in Washington, once before a Senate subcommittee and another time in the House; and legislation as drafted seems to ignore the unique sort of local government that we have.

This has been especially true in the revenue sharing area.

Mr. REUSS. How is that so?

Mayor ORR. Ordinarily the legislation is drafted to benefit municipalities; and while our county government, under some circumstances,

is like a municipality, the net result in this area with respect to revenue sharing has been that the cities get a disproportionate amount of money, although the county government is basically the general-purpose government that is furnishing the welfare, hospital, model cities, and other programs of that nature.

We think that probably more precision is going to be required in the drafting of legislation—and I do not think we are totally unique—so that the money gets to the government that furnishes the service.

I am extremely proud of the people of our county for the kind of local effort they have made. I believe that the $550-million bond issue that was passed by our voters in November is the biggest one that was passed in any urban area in the country last year—which demonstrates that the people here want to help themselves. They want to make a substantial local effort.

We honor that kind of principle, and we ask you to honor it by cooperating—by giving us Federal help as well.

Mr. FASCELL. If your expert staff would come to the table, Mayor, Congressman Ryan has a question or two.

Mr. RYAN. I would like to ask the mayor a question since we have the advantage of his presence here.

I am from the San Francisco Bay area, where we are very familiar with your form of government because there has been a raging and running kind of verbal gun battle in the bay area over metropolitan government as you have achieved here. You could start a fight very quickly in the San Francisco Bay area that you might go the way that the Dade County government has already gone.

From the testimony I heard this morning, I think you have done some of the things here that we still hope to do in the bay area.

There is one question that has been nagging me for some years about which I would like to ask you. I am assuming that part of your problem here is due to the fact that the city has expanded out into the suburbs, into the essentially open areas, and is causing a kind of tidal wave or tidal action, as the people move out to the better life—leaving the central core somewhat empty. In the process you have to have new roads, new schools, and so on; and they create their own kinds of costs in terms of economic, pollution, and environmental problems.

Is this suburban movement a part of your problem here? If it is, has there been any discussion on your board about the desirability of exploring means by which you might attract some of that middle class back into the city as part of the attempt to reduce the costs of transportation and pollution, additional construction, and so on?

Mayor ORR. Yes, there has been. Let me say this: I hope that we have something by way of experience to offer you in the San Francisco area, Congressman Ryan, because we have gained a great deal from you.

Mr. RYAN. Maybe I can ask you to come up and campaign a little bit.

Mayor ORR. A majority of the members of our commission have just been to San Francisco. Unhappily I could not go. I am planning to be there in a week or so to study BART.

Mr. RYAN. Be careful.

Mayor ORR. I will tell you one of the significant things about it from our viewpoint.

Again, there is $800 million plus local effort by local people. That is a significant kind of thing. They were candid enough—let me say in their behalf—to admit to us some of the errors that had been made so we would not have to suffer through them. Our members were highly impressed with the kind of information, the friendliness and cooperation, that we received while in San Francisco.

We have a system here in the county—I do not know that I would exactly characterize it as a move from the central city out. We have 26 cities in our county and a planner talked to me just recently who said:

> You know if all over the world you are finding people moving out of the central city, maybe they are right. Maybe you just ought to accept that fact and stop continually trying to pump up the central city.

There are ways, I think. We have so many in-city problems today, and density, to many of them, seems to be the watchword.

The fact is, we could probably better serve the people and the environment by selective densities and providing services to areas, some of which would be a relatively high density. It would certainly make more economical sewage disposal, solid waste, transportation, and so forth.

Mr. RYAN. What will happen in 30 years when people move from where they are to someplace else, because where they are becomes unattractive? In other words, for 200 years we have simply left the kind of land that we have destroyed, moved somewhere else where it was nice until that became deteriorated, and so on.

BART is a good example or a point of departure to me, because while it is the first new transit system in this country in the past 60 years, the fact is that it is predicated on an assumption that I cannot quite accept. It is a $2½ billion bet tied to the property tax—which I think is the essential point—instead of the sophisticated electronics versus the old style, and so on.

What if the people do not ride it—and they are not riding it so far—then who pays off? The same people who built it? They paid for the construction, and they are saddled with the debt, but they do not use the system.

We should be less concerned with accepting the fact that people are leaving the city and concentrate instead on why they are leaving. Can you explore some ways of bringing the people back to the cities by creating more attractive and useful environments?

If you go to San Francisco next week, I would suggest, for instance, that you take a look at the area down around the Embarcadero, which is undergoing a very interesting transition. There are some buildings there that are highrises, where there are people living as well as working—the multiple-function highrise, as opposed to the single function.

For instance, if you go a few blocks away to Montgomery Street, you will find 15 to 20 new very tall buildings, which are 50 or 60 stories high and which have been built in the last 10 to 15 years. If you go there on the weekend, you will find that area completely deserted. There is nothing there, yet there are billions of dollars invested.

It seems to me that an imaginative planning concept would be to find ways to get people to use areas for more than 40 hours a week where a great deal of money has been spent in construction.

Is there anything like that going on in the discussion stage here?

It would be better not to spend billions of dollars on a project like BART, but to begin spending the same kind of money clearing out, cleaning out, and putting up the kind of high rises which bring people back to the city and would alleviate their feeling like ants in ant colonies.

Mayor ORR. Surely, we are doing that here.

I hope you will understand. It had to bring about almost a total change in our type of philosophy down here. For years and years we have been infected with this sort of chamber of commerce boosterism that suggests that everything that is bigger is better. The more you get the better you are.

We are now coming painfully and slowly to understand that that is not always true.

As my prepared statement to you pointed out, we are in the process right now of having to go on a crash program, as it were, to bring our services up to par. I would like for people to say about us for awhile, like they do about New York, that "it is a nice place to visit but I would not like to live here." We simply have to catch up with the furnishing of services. We are not going to stop the growth of Dade County.

Those of us who are fortunate enough to be native of the area recognize that we have to be willing to share the beneficence of our great climate and other attractions with others as they come. San Francisco has not grown much in the past years, but it is certainly one of the most delightful cities of the world.

Mr. RYAN. My county, which is south of San Francisco, has, and that is why I am here.

Mayor ORR. Those are the kinds of problems, Congressman Ryan, that we must address ourselves to at the local level. I am so pleased to hear you saying that from a national level. That is the kind of constructive work that we have to bring about if we are going to do something positive about the quality of life for the people who live in our country, wherever they are.

Mr. RYAN. Mr. Chairman, I have one more short question of a very specific nature:

Mr. Sloan, on page 2 of your report here you talk about discharging into a 90-foot depth of water. What is the quality of that water? I lost a little bit of your technical talk, and I would like to have you explain a little more if you could.

Mr. SLOAN. We are referring to discharging into the ocean on the edge of the Gulf Stream.

Mr. RYAN. What kind of discharge is that?

Mr. SLOAN. Chlorinated, 90 percent removal, secondary sewage treatment.

Mr. RYAN. Secondary instead of tertiary.

Mr. SLOAN. That is right.

Mr. RYAN. How long do you plan to continue that discharge? Do you have any plans, or is that for the indefinite future?

Mr. SLOAN. All of our plans initially will be the 90 percent removal; but we are acquiring a new site for our treatment plant so we can go to a higher degree of removal in the future. We are anticipating that the requirements for it will be made by the regulatory agencies, so we are

planning and allowing space for it. There is a huge hurdle to get over to achieve the secondary.

Mr. RYAN. The reason I asked the question is that the implications are multibillion dollars in their effect.

What if that 90-foot discharge—which is an enormous discharge—turns out to be a very heavy pollutant in itself because of the very delicate balance in the ecological scale of the oceans at the time the oceans themselves are becoming poisonous?

What if, after you get all that done, it does not turn out to be nearly enough and you have to go further?

Are any studies being made now that would indicate that such further treatment—tertiary treatment—would not be necessary or will be necessary?

What is the state of the research on that?

Mr. SLOAN. There have been extensive studies in the ocean, up and down the coast from Palm Beach County south to our area, which indicate that the degree of removal that we plan should be more than adequate to protect the ocean in terms of pollution and discharges.

Mr. RYAN. Whose judgment is that?

Mr. SLOAN. The EPA made a study about 2 years ago, which we have copies of, that surprisingly did not find a whole lot wrong with raw sewage going to the proper extent out to the edge of the Gulf Stream. Backing off from that, of course, we appreciate that we have to treat sewage to a good degree.

The actual studies that have been made in the ocean have been extremely favorable and would lead us to believe that the methods that we are planning will be more than adequate for an indefinite period of time.

Mr. RYAN. That is quite a judgment to make. That may or may not be correct; and if it is not correct, there could be a major disaster involved in the planning.

Mr. Chairman, I would yield back to the questioning with a request to members of environmental groups in the audience: I would like to have some kind of comment by them about how they see this conclusion that the secondary treatment going out into the ocean, the Gulf Stream, is not dangerous.

Mr. MORRISSEY. Congressman Ryan, may I briefly expand on that?

I think a different approach might be that if we are required to go to tertiary treatment, we are coming very close to an effluent material that is recyclable, and that it would be a great waste of a water resource to go to tertiary treatment and dispose of it in the ocean. Our ultimate goal is to go to tertiary treatment, or whatever else is necessary beyond that, and recycle the water.

Our first step is to prevent it from causing pollution and causing damage. Our next step in the order of progression would be to go to tertiary treatment, and whatever nutrient removal may be necessary to make the effluent compatible with either the ground water system or the Everglade system, so we can reuse it.

Mr. RYAN. I would like not to worry about coming back here say 15 years from now, assuming the people of San Mateo County are still happy, and discovering that the planning that went on 15 years before led to the substantial pollution of the Gulf Stream to the point where

it has endangered the entire production of the natural products that come from the sea. If we get that kind of mistake, the chances of reversing it with any kind of celerity are that much slimmer. I think the kinds of judgments we make now are extremely important, both with regard to the financial points of view as far as the Federal involvement is concerned, and in regard to the effect our decisions will have.

Mr. MORRISSEY. That is very true. Our plan does call for a tertiary treatment system to be installed in the western parts of Dade County as it expands, at that point to go into recycling as a means of disposal.

Mr. FASCELL. You would divert?

Mr. MORRISSEY. Yes; we would divert whatever sewage flow is possible that is not contaminated by saltwater intrusion and would make it incompatible with the freshwater system or whatever sewage is not contaminated by industrial wastes.

Mr. FASCELL. And you would take it out to the west Dade plant and recycle it?

Mr. MORRISSEY. Yes.

Mayor ORR. We would be less than candid to tell you that we do not have a real problem with saltwater intrusion into our system. That is an unhappy fact that we face.

Mr. FASCELL. We have another problem, too—that the state of the art is not at the ultimate yet. Every time we move, we are changing something.

Congressman Lehman would like to ask some questions about north Dade and site 14 and a few other noncontroversial issues.

Mayor ORR. We got your telegram, Congressman, about the retention facility.

Mr. LEHMAN. Thank you. I just wanted to thank the mayor for arranging this hearing down here in this area. I particularly want to thank my fellow Congressmen for coming to Dade County, south Florida, to hold these hearings. I think we are very fortunate not only that the Congressmen are here, but the quality of the congressional leadership that is appearing here.

Chairman Reuss is quickly recognized as a very outstanding Member of Congress. I never saw anyone in Congress with more of a variety of interests. He has taken the leadership in everything from tax reform to environmental issues.

Mr. Gude, on my right, is one of the great independent thinking Republicans we have up there. He is a natural leader. And Mr. Ryan—a new freshman like myself—is bringing into Congress 10 years of great experience in probably the largest legislative body of the largest State of the Union, California. He is making his mark in Congress. And, of course, there is Dante, and there is nobody like him in Congress.

I do not think anybody in Congress is held with the kind of combination of both respect and affection as Dante is.

Mayor ORR. There is nobody like him down here.

Mr. LEHMAN. There is nobody up there in the committee and on the floor of the Congress that tells it like it is as well as Dante does. That gives him the kind of integrity and forthrightness that we so need in our legislative bodies.

In the constituency that all Congressmen have among their fellow Congressmen, nobody has a better rapport than Dante.

Should I make my little statement now?

Mr. FASCELL. If you have some questions.

Mr. LEHMAN. I have no questions.

Mr. FASCELL. Mayor, thank you very much. Your staff has been very cooperative in their testimony and answering our questions. We will probably have some more issues that we would want to direct to your staff in order to make the record complete.

The record will be submitted to you for any additions or corrections that you might want to make. We are trying to analyze the problems that exist, to get different points of view, and hopefully make a contribution to a resolution of them.

Thank you very much.

Mayor ORR. Let me say, Congressman Fascell, that this county has become very active in the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities, and we are participating in their programs in Washington. To the extent that the staffs of those bodies can be of service to you, I know they would be eager to cooperate. I have found them to be an excellent source of material in providing answers to many of the questions that face us down here.

Mr. FASCELL. Thank you very much, Mayor.

I would like to ask Mr. Sloan one final question on the environmental impact statement of EPA. Is that final now? The last one I have is a draft dated April 13, 1973.

Mr. SLOAN. No, sir. The impact statement is presently in the preparation of the final draft. The public hearing was held on the 15th of May.

Mr. FASCELL. Based on the draft statement that was made public?

Mr. SLOAN. That is right. That is the status of it now.

Mr. FASCELL. Do we have any idea when the final version will be ready? Do I understand by July 1?

Mr. SLOAN. I believe about July 15.

We expect the various procedures and the adoption of the impact statement should be concluded roughly by the middle of July.

Mr. FASCELL. What is the first deadline that the county is required to meet, if and when the impact statement becomes final?

Mr. SLOAN. We are already in violation of the existing Florida statutes about the 90 percent removal treatment of sewage, so there is not a specific deadline as such. We just very urgently need to move on with the job. We have already passed the January 1, 1973 deadline, provided for in the State law.

Mr. CARTER. We do have one deadline, Mr. Fascell, that involves the Interama site. The contract with Interama says we must make a full payment by July 21 of this year. We do not consider it advisable to go ahead and make that payment of some $2 million on land in Interama if we cannot put a plant on that site. It is very important to us that the EPA environmental assessment and final statement be out prior to that day so we can make that acquisition.

Mr. FASCELL. Mr. Finnegan has several questions he would like to ask.

Mr. FINNEGAN. Thank you, Mr. Fascell.

Are the north Dade and south Dade site facilities being built for future capacity—1980 or the year 2000?

Mr. SLOAN. Yes. The basic design is for 1985 for the North Dade and the South Dade Districts. Then, after that, we do not intend to enlarge them. We intend to divert sewage collected in the western part of the system, which would be free of salt contamination, to a new plant west of the airport. That is the basic plan. That would be the plant that would be constantly expanded in the future to match continued growth.

Mr. FINNEGAN. Has there been any suggestion by EPA to construct or plan these plants in stages for funding reasons?

Mr. SLOAN. EPA asked that we build only a 40 million gallon plant in the North District, where 80 million is what has been planned for 1985 by us; and also in the South District, EPA wants only a 30 million plant, where 50 million was our basic plan.

Mr. FINNEGAN. What would be the effect if you were to stage it that way? At the time the plant is completed, would you in effect be behind the eight ball?

Mr. SLOAN. We basically feel it is poor planning and poor economics. We probably can get along with 30 million, but that requires us to allow certain of the private sewage utilities to continue until 1985—until we have a plant in the western part of the county—before we could discontinue them.

At the north end, we see a bare minimum of 60 million to be required—not 40 million, as EPA has suggested.

However, there is a serious doubt in our minds as to whether that is a good decision. However, if we have to go to 60 million rather than 80 million as the very initial plant construction, I think we would be willing to do it to accommodate the financial restrictions; but it will not be very long after the completion of the plant before we will exceed the 60 million flow capacity.

Mayor ORR. Yes. We will continue behind the eight ball.

Mr. FINNEGAN. The 1971 EPA enforcement conference recommended that all wastes from vessels using domiciles for businesses cease discharging into waterways. What has happened in regard to this recommendation?

Mr. SLOAN. Mr. Morrissey is better qualified than I am to talk about the waste disposal in vessels.

Mr. MORRISSEY. That recommendation was made by the conference and shortly thereafter was published in the Federal Register as certain regulation adopted by the Federal Government, or proposed to be adopted by the Federal Government, that would preempt local communities from addressing themselves to any ordinance with respect to vessels or sewage systems for vessels.

However, the county has currently had under consideration an ordinance that would prohibit the discharge from live aboard type vessels in the inland waters of Miami and perhaps the coastal regions of the bay. This is presently under consideration.

Mr. FINNEGAN. Has EPA itself told you it is a preemption?

Mr. MORRISSEY. It states in the law that it preempts, after the effective date of the law, which is, I believe, 3 years for new vessels and 5 years for existing vessels.

Mr. FINNEGAN. It is in the 1972 statute.

Mr. MORRISSEY. I believe the preemption clause still is in the new amendments.

Mr. FINNEGAN We will look at it.

Mr. FASCELL. Thank you very much, gentlemen.

And now I welcome the opportunity to present my distinguished colleague who joined us in the Congress of the United States from Dade County. In the short time he has been there, he has shown by his dedication and determination to be responsive to the needs of his people. If he has to shake the rafters or the timbers or anything else, he is going to do it in order to get the job done. He has been doing that. As Leo Ryan has said, he has been raising hell, too. Bill Lehman is the man to be heard from and to get results for Dade County in the Congress of the United States.

It is a great pleasure for me to be his colleague and to work with him in the Congress. We are delighted to hear from you now, Bill.

STATEMENT OF HON. WILLIAM LEHMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. LEHMAN. Thank you, Mr. Fascell, Chairman, and members of this distinguished panel.

Without editorializing, I was listening to the radio coming into this meeting from North Dade. I heard about the safe launch of the astronauts to go up to the Skylab to study and learn about life-support systems in outer space. I think it is rather relevant that here we are holding these hearings, in essence, to study something about the life-support systems here on Earth. We are spending billions of dollars—and I think we should—for these space programs. But we are also going to have to spend billions of dollars not only for the life-support systems in outer space, but for some of the life-support systems in innerspace—right here on Earth—and that is what ecology and environment is all about.

I am going to talk about an issue that happened in Broward County, the southeast portion that happens to be in the 13th Congressional District.

As I said, we must recognize the need, even more than in outer space, for such programs to safeguard the life-support systems here on Earth. The high cost of environmental protection is essential to humanity and, as I mentioned before, far above in priority the cost of the technological things of learning about outer space.

Environmental problems are just not birds and bees and fish, but basically the quality of life that human beings are going to have to live, most of whom are beginning to live in our urban areas. The deterioration of life resulting from the direct expenditure of environmental resources can be seen especially in our urban areas, and especially in what is happening in our urban areas in south Florida.

Part of the benefit of the recent environmental concern has been the recognition that we have an urban environment. I keep emphasizing this word "urban." Urban environmental problems are just as important as those of our countryside, our forests and our streams.

As the Congressman from this district—one of the fastest growing areas in the United States—I have begun to believe that these urban environmental problems are one of our major national questions at this time. In the 13th Congressional District, a development known as the Three Islands was proposed in an already overpopulated

area. It presented a starting place for me to analyze environmental difficulties that I think Congress must solve.

The Three Islands project is, as I said, a typical prototype of urban environmental problems. The fault of the project was its attempt to increase density in an already overpopulated area. It was not the size of the high-density project, but the placement of the project in an area already overpopulated by a developer who apparently overlooked the effect of the surrounding community.

Fortunately in this area, the citizens were protected. Dr. Milton Weinkle, the city commissioner at the time in Hallandale, who has now become mayor, challenged the concept that the developer had a right to create overdevelopment in this already developed area. Dr. Weinkle and the other citizens called themselves the Hallandale-Hollywood Preservation Committee and have opposed the project to the point now where the developer has indicated that he will not proceed with the original plan.

But Three Islands is still an environmental controversy. The developer has a suit pending against the city of Hollywood. As a result of the preservation committee's action and its own courageous commissioner, the developer has the density for that portion of the project within the territory of Hollywood.

But the local actions are not safeguards enough. Although both State and Federal agencies have indicated that the project as proposed would have detrimental effects on the human environment, there still remains no guarantee that the property will not eventually be developed in a manner that overtaxes municipal facilities of Hallandale and Hollywood on which this development is going to have to depend.

The Three Islands project is evidence of two types of difficulties that exist today. No. 1. It is a lack of comprehensive environmental laws. No. 2—and I think even more important—is the inability or the unwillingness of present administrative agencies to enforce existing environmental laws. It is time that we view such areas as the Three Islands as part of a municipality that is part of a county and as part of a State. It is time that we recognize, in the words of John Donne, that no man is an island. There is a relationship in the environmental system that transcends and ignores artificial boundaries. Only Congress, because of our unique Federal system, is in the position to cut across State and local boundaries and plan for environmental regions to solve environmental problems.

Technological breakthroughs made it appear for a time that development did not depend upon environmental systems, but Hallandale, along with many other areas of Broward and Dade County, which were once swamps, have been developed because of technology. But for all our technology, the Three Islands project cannot be isolated from the fact of its need for water, clean air, and other environmental necessities. We must still plan with nature.

Congress must begin to address itself to such needs, and subcommittees as this must point the way to an appropriate type of legislation and oversight. But, in addition to new legislation, we must recognize that we are not obtaining the best enforcement from the existing legislation. We have given environmental responsibilities to agencies that do not or cannot deal with responsibilities. When agencies attempt to enforce environmental laws, they lack the expertise in the programs to deal with this problem.

A representative of the Hallandale-Hollywood Preservation Committee that opposed the Three Islands development, is scheduled to testify before the committee. As he related to me, the experience of the preservation committee showed the inability of the agencies to protect the environment and to adequately perform this job.

With respect to the Federal legislation that would be applicable to the Three Islands, I was asked to assist the preservation committee and in the attempt to do so I became aware of the problems that were involved in this kind of question. I would like to cite this as an example of what I have become acquainted with.

The Corps of Engineers, which is supposed to regulate dredge and fill operations, took over a year before it adequately responded to citizens' requests for information as to whether the lake there—known as Lake Villa—had been properly or legitimately filled. We have been using the Army Corps of Engineers as an environmental agency when they are not really programed that way. Much of Lake Villa right now is part of the land where the Three Islands project is to be located.

At the time of the filling, there was a question as to whether the proper permits were ever issued by the Army Corps of Engineers.

Finally—according to a response to letters written by the Florida Audubon Society, which had become interested in this matter because of the preservation committee's activities—the Corps of Engineers determined that it did not even feel that permits were necessary; and the corps also took the position that at this time it would be unjust to review the matter after the dredging had already occurred.

But why? Why should citizens, who might have wanted a lake for recreational uses in the area where there are not adequate parks and other recreational areas, now be forced to excuse a violation if there was apparently this violation?

Why should the Corps of Engineers have this kind of judicial power and this kind of discretion?

It works both ways: In other areas, the Army Corps of Engineers has—without giving developers the opportunity which has been afforded the developer here to explain why their project might not be environmentally detrimental—immediately recommended litigation because of dredge and fill operations allegedly done without permits.

It is unfair to both citizens and developers to allow such discretionary application of law.

The Coast Guard seems to have failed adequately to enforce its own duties to prepare an environmental impact statement regarding the construction of the bridges for the Three Islands. The Coast Guard apparently failed to enforce statutes that require dredging permits.

I was asked to assist the preservation committee in working with the Coast Guard to reconsider its position, and have attempted to do so; but many citizens in other areas do not have the benefit of a preservation committee or are unable to obtain congressional assistance, to convince Federal agencies to review environmental functions.

In conclusion, Congress must take the action to insure that existing legislation which can protect the environment does in fact protect the environment.

It is time that they recognize that the need to develop life support systems in space is the same as the need for life support systems on

Earth; that there are the same environmental problems in Hallandale, Dade County, and throughout the country.

Until we recognize this responsibility, we will be ignoring the rights of those citizens, the rights of those developers who want to do it right; and more importantly, we will be ignoring the basic life support systems upon which all of us depend.

Mr. FASCELL. Thank you very much, Bill. I agree with you that one of the biggest and the most often expressed complaints that I and many others have had in Congress is that people just want to know what the rules are, and that they be applied to everybody fairly. Just think of never knowing exactly if you are doing right or wrong. You never know if you are going to wind up with the Justice Department breathing down your back because of a discretionary attitude on the part of Department of the Interior or Corps of Engineers.

It is really intolerable, and I for one certainly appreciate you making that point in your prepared remarks. Mr. Reuss?

Mr. REUSS. I share Congressman Fascell's appreciation of your excellent testimony, although I am frankly concerned by it. We are certainly going to examine in greater detail the Three Islands case that you cite—where the Corps of Engineers apparently allowed land and water operations to proceed without a permit, and did nothing about the permit requirement.

Mr. LEHMAN. Also, the Coast Guard apparently permitted construction of bridges without the proper permit.

If the chairman would yield: In talking with these Coast Guard people, and with the people from the Three Islands, it seems that the Coast Guard is concerned about this, but the environment is not the function of the Coast Guard. They are involved almost against their will, and they would like out.

So, I think the problem is that we get these extraneous governmental agencies involved in problems that are certainly secondary to their main function, and they should not be that way.

Mr. REUSS. In our prehearing staff investigation of some of the ecological problems of the Florida area, we have come across a number of other cases of ostensible Corps of Engineers' disregard of the laws—notably certain provisions of the River and Harbor Act of 1899. I agree with what Congressman Fascell just suggested—that we need a government of laws, not of men, in our democracy.

This business of sometimes requiring a permit and sometimes not is not only a betrayal of the environmental duties of our Government; it is unfair to everybody, including honest citizens who want to obey the law but cannot find out what the law is.

You have done a valuable service, as always, and we appreciate your being, here, Congressman Lehman.

Mr. FASCELL. Congressman Gude?

Mr. GUDE. I certainly want to thank you, Bill Lehman, for your fine statement. I would make a corollary to Congressman Reuss' statement that we should not only have a government of laws, but that our laws are to be applied in an evenhanded manner in every instance. The public must not feel that some people can evade the law and others must toe the mark.

I certainly want to commend the people of your district for sending you to Washington. You are doing a tremendous job. I have been most impressed with my colleague in the short time that I have known him in the Congress of the United States. Thank you.

Mr. FASCELL. Congressman Ryan.

Mr. RYAN. I have learned already that it is well for freshmen Congressmen to be seen much more than heard. Bill and I both know that. Bill has done an excellent job explaining what some of the problems down here are. I can only echo what others have been saying about the abilities of the two of us together: We huddle together out in the back corner.

It is good to say publicly here in his own country that I value his advice on matters that concern me and I hope that it works both ways.

I have no questions, Mr. Chairman. I know something of the problem from what Bill has said during this hearing and previous to it. I look forward only to more development on this same topic.

Mr. FASCELL. Thank you very much, Bill. We appreciate it. We know you have a rough schedule. You are welcome to sit with us as long as you are able to. Join us whenever you can.

Mr. LEHMAN. I will try to get back later today.

Mr. FASCELL. I would like to suggest at this moment, before the reporter faints and I do, too, that we take a 5-minute break.

[A brief recess was taken.]

Mr. FASCELL. May we have order, please?

We have a very difficult schedule as you can already surmise. We're running way behind time. We certainly appreciate your cooperation.

It is very difficult to hear up here on the dais. I want to commend the audience which has been most cooperative, but the slightest discussion, the slightest undertone is very annoying up here.

Our next witness is Mr. George K. Bernstein, Administrator, Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development. Mr. Bernstein.

STATEMENT OF GEORGE K. BERNSTEIN, INTERSTATE LAND SALES ADMINISTRATOR, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ACCOMPANIED BY RICHARD H. HEIDERMANN, DIRECTOR, ADMINISTRATIVE PROCEEDINGS DIVISION; AND JOHN F. WEAVER, DEPUTY DIRECTOR, EXAMINATION DIVISION

Mr. BERNSTEIN. Thank you.

I would like to introduce my two colleagues, Richard Heidermann on my right, and John Weaver on my left.

I know you are rushed and I have a prepared statement, in which I sought to answer the specific questions you directed at me.

Mr. FASCELL. Without objection, we'll place that entire statement in the record. You may summarize as you see fit.

THE ROLE OF OILSR

Mr. BERNSTEIN. We completed recently a series of hearings in 17 cities in the United States into the problems of the interstate land sales area. As Congress in its wisdom saw fit, it appointed many other watchdogs of the environment. We are not an environmental agency.

We are a disclosure agency. If there are environmental problems that come to our attention, or should come to our attention, it is our responsibility to bring those problems and the impact of those problems to the attention of the buyer and prospective purchaser of land, but we do not have a substantive, regulatory responsibility over the quality of the environment, or even the quality of the developer.

If a developer chooses to sell land under water, he's entitled to sell land under water, under our act, if he discloses that fact to the public. If he pollutes the environment, and he's in court defending himself, he is entitled to sell land in that development as long as there is full disclosure of the legal implications of what he is doing.

HEARINGS TO INVESTIGATE LAND SALES

So with that limitation on our responsibility, we held these hearings around the country to see in what ways we were discharging adequately our responsibilities, which way we were failing, what we could do to improve the law and the regulations under which we operate, and what we could do to educate the public.

We learned an awful lot in these 17 cities. We had an average of over 20 witnesses in each of these cities, and we received 700 specific complaints from witnesses at the hearings. The largest percentage of these complaints represented sales practices and misrepresentation by development salesman on the job; lying or misrepresenting to the prospective purchasers.

ENVIRONMENTAL ISSUES

Many of the other complaints were concerned with amenities that were promised, which were not provided. That gets much closer to the environmental area, because many of these amenities could not be provided without the type of permits that you are discussing today. Without the type of environmental impact statements that you are discussing today, without the whole ability of the developer to perform, the inevitability of the purchaser ultimately getting something or nothing for his dollar depends to a very large extent on whether or not the developer meets the environmental needs and responds to those needs.

Very interestingly, this committee brought to our attention specific information, which we did not have in our files, which had not been brought to our attention, concerning Palm Coast, an ITT development, and the problems that Palm Coast is having with the Florida environmental people.

As a result, we have been in touch with both the Florida Land Sales Division, which approves the property report, or the offering statement, as it is called down here in Florida, for Palm Coast. In addition, we sent one of our investigators to Jacksonville, and he is there at this time meeting with the various State people and the environmental people who are involved.

I would like to sketch the type of situation we have here in Florida. Under the Interstate Land Sales Full Disclosure Act, our office is responsible for requiring that every developer—with some exceptions—who is selling more than 50 lots in interstate commerce must register with us, must submit to our office a statement of record and prepare

and submit to our office a property report, which is to be given to every prospective purchaser.

That property report is equivalent to an SEC prospectus. It should tell the purchaser the important aspects of that sale, the limitations on the property, the restrictions on it, the possibilities of his never taking title, the possibilities of foreclosure. It should tell him when the roads will go in, when the sewers will go in, what he can expect, and what he'll get for his money.

STATE FILINGS

The act also authorizes us to accept—not in lieu of the substantive requirements that prohibit misrepresentation but in terms of the paperwork requirements—filings in those States where we find that the State exercises adequate supervisory responsibility over developers in requiring them to register and prepare a property report, and statement of record or whatever it might be called. In the State of Florida, what we call a property report is called an offering statement.

We have accepted four States' registration in lieu of Federal filings, with minor exceptions which we require on top of those. Those States are Florida, New York, California, and Hawaii.

The Palm Coast situation fits right in there. The Palm Coast developer registered with the State of Florida. Florida certified to us that the Palm Coast filing was in accordance with its registration requirements.

FULL DISCLOSURE—THE PROPERTY REPORT

This committee has brought to our attention substantive information which, if borne out, will mean that the purchaser is getting less than full disclosure in the current property report. The problems that the corporation is facing with respect to permits, with respect to use of the waterways, with respect to dredging, may result in the individual never being able to have on his property what was promised in the property report.

All these matters appear not to be in the Florida offering statement. If this is true, as alleged by this committee, and yet not borne out at this time by our own independent investigation, people who have purchased already may have legal remedies under the act for damages. If so, we have the right and the responsibility to initiate proceedings, even though this is a Florida registration.

AMENDMENT OR SUSPENSION

If Florida does not act to amend the property report at its level, we will issue our own notice of proceedings. And if ITT does not amend the property report, as we see fit, then we have the right to suspend it from all sales in interstate commerce, and that would include sales in the State of Florida.

So without prejudging the case or indicating how we would go, we have a real role there and a real responsibility and we are in the process now of carrying out that role. We have in the past year, since I took over the office, suspended more than 200 developers from selling land throughout the United States.

We got about five indictments and two convictions. We have just obtained our first injunction in the Southwest. We think there is a big dent being made.

But the important thing about our role is that it is a disclosure role. The most that we can do is bring the facts to the attention of the buying public in the property report, and the public has to read that document. If they don't read that document—and we require every permit to be listed there—if they don't pay any attention to it, there's no protection that we can give them.

That's why we urge people not to buy on the spot, at these free dinners, on these junkets to Miami, junkets to Vegas, where they're under constant sales pressure. We urge them to take that property report home, insist on it, to show it to an attorney, show it to somebody who understands—there are very complicated things in there—so they can make an intelligent decision with that background.

We are prepared to answer any questions that you may have.

[Mr. Bernstein's prepared statement follows:]

PREPARED STATEMENT OF GEORGE K. BERNSTEIN, INTERSTATE LAND SALES ADMINISTRATOR, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

It is a pleasure to appear before this committee and add whatever information I can to your examination of environmental problems of the Florida area. My observations will be, of course, primarily from the standpoint of the administration and enforcement of the Interstate Land Sales Full Disclosure Act.

Since I became Administrator in March 1972, the Office of Interstate Land Sales Registration (OILSR) has embarked on a vigorous campaign to improve sales practices in an industry characterized by fast-buck artists and high pressure tactics. Our first concern was to launch a concentrated effort to educate the public about the pitfalls of land buying. Last year we held 17 public hearings throughout the country, including Miami and Tampa, in order to increase public awareness of OILSR and of purchasers' rights under the Act.

I recently had the privilege of testifying before the House Banking and Currency Committee in order to bring that committee up to date on the results of the public hearings and the general status of our administration of the act. I believe that testimony may be helpful to you in understanding our program better and would be glad to submit a copy of that statement for the record, if you so desire.

In addition to the public hearings, we have stepped up our enforcement campaign by suspending sales in some 200 subdivisions and securing several criminal indictments and two convictions. Each time we take a significant action against a developer, the widest possible dissemination of publicity is made through press releases, interviews with the media, and so forth, in order to further alert the public. This also serves as an effective warning for other developers who otherwise might be inclined to assume that their illicit activities will go undetected.

Although we cannot regulate the quality of subdivided land offered for sale, we do insist that all adverse or potentially adverse facts affecting a purchaser's use and enjoyment of property be fully disclosed. Our current regulations, in fact, require that a developer disclose in the statement of record and property report whether the land is affected by any unusual or unpleasant noises, odors, pollutants, or other nuisances. In addition, any unusual safety hazards or any proposed plans, private or governmental, for construction of any facility which may reduce the value of land must also be disclosed. The developer must disclose whether the land is subject to special natural hazards, whether it has been identified by any Federal, State, or local agency as being subject to such hazard, and whether it is subject to special land use requirements which would restrict development or entail unusual development or maintenance expense.

The developer must also state whether any part of the subdivision is subject to any type of flood control or other easement and, although not specifically required by our regulations, we often ask a developer to state in the property report whether the subdivision incorporates a comprehensive program to control soil erosion, sedimentation, and flooding throughout the development.

On May 4 of this year, we published proposed changes to our regulations that would require developers to identify the Federal, State, or local agencies which have the authority to regulate or issue permits or licenses with respect to the contemplated division of land and proposed or existing facilities and improvements.[1] One proposed regulation instructs developers to address themselves specifically to environmental impact statements, Corps of Engineers permits, and related matters pertaining to water resources and pollution control boards, river basin commissions, or similar organizations. If a developer has obtained the necessary licenses or permits to carry forward his proposal, he must submit copies of each permit or license. If permits have not been obtained, he must disclose the effect upon purchasers of the lack of such permits.[2]

We believe that the additional disclosure to be required under this proposed regulation will strengthen the position of purchasers and will lessen the tendency of developers to ignore legally binding environmental requirements.

Although the regulations we have proposed will formalize our procedures with respect to disclosure of needed permits, licenses, and so forth, we have previously obtained similar information in specific cases where our Office was aware that such requirements existed or believed that they were likely to exist on the basis of topographical maps or the presence or the developer's promise of water impoundments, canals, piers, and so forth. In some cases, consumer complaints have made us aware of situations requiring special permits and licenses.[3] For example, a complaint lodged with our Office against a Virginia development led to the discovery that dredging was being conducted without the necessary Corps of Engnieers permit. We required an amendment to the statement of record and property report and insisted that a warning be placed on the front page of the property report advising purchasers that unless the appropriate permits were obtained, the developer could not complete the subdivision as promised.[4]

We have not requested the Corps to notify us of each violation of statutes administered by that agency. However, we informally work with and exchange information with several of the Corps' District offices, especially Jacksonville and Norfolk.[5]

The Corps of Engineers published regulatory changes on May 10 of this year prescribing the policy, practices, and procedures to be followed by all Corps installations in reviewing permit applications. We are preparing comments on the corps' regulations, describing our interest in these matters, and will request that OILSR be added as an interested agency to be advised of relevant permit applications and their disposition.[6] We recently asked the Interior Department's Bureau of Sport Fisheries and Wildlife to inform us of activity in HUD Region IV, encompassing coastal areas and wetlands from Virginia to Texas.[7] In addition, our proposed regulatory changes would require disclosure of whether any principals in the development corporation have been disciplined, debarred, or suspended by any governmental body or agency or indicted or convicted by any court for violation of a Federal, State or local law or regulation in connection with land sales and related activities.[8] Litigation that might affect the developer or the subdivision must also be disclosed.

Even without the adoption of our revised regulations, the omission of material facts in the HUD filing, such as those affecting the ability of the developer to carry out his promises, can subject that developer to both civil and criminal liabilities. Grounds for enforcement action exist when information available to our Office indicates that there are material omissions or untrue statements in the HUD filing. Such action usually takes the form of a notice to the developer alleging the particular deficiencies in the filings and providing him with 15 days to answer the charges. Failure to respond to the charges is a basis for the issuance of an order suspending all sales in the development. In addition, we have required developers to offer full refunds to purchasers who bought under conditions where full and accurate facts were not disclosed in the property reports.[9]

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[1] Responds to question 1(b) of committee letter of April 23.
[2] Responds to question 1(c).
[3] Responds to question 1(a).
[4] Responds to question 2(b).
[5] Responds to question 2(b).
[6] Responds to question 1(c) and 1(d).
[7] Responds to question 1(a).
[8] Responds to question 2(b).
[9] Responds to question 2(c).

All the foregoing discussion applies uniformly to developers who have filed directly with the Federal Government. In limited instances, HUD accepts filings that have been made with State authorities as if they were Federal filings. California, Hawaii, New York, and Florida are all States with which we have agreements to accept State filings. In these instances, our procedures are obviously somewhat different, and I would like to briefly outline them for you here. The statement of record and the property report are in the form and reflect the content required by the State. We also require the following in such cases: an abbreviated statement of record giving certain administrative information, the inserting of voidance and revocation language in the contract, the placing of the HUD disclaimer on the face of the property report, the inclusion of certain other documentation if not required by the State (such as articles of incorporation), and a certification by the State that it has permitted the filing to become effective.

OILSR reviews the additional information submitted with a State filing for consistency with the State certified material and for compliance with our specific instructions. However, our examination staff does not typically look behind the disclosure accepted by the State. However, if information is received by OILSR which suggests that a developer's State filing accepted by OILSR omits material facts or contains untrue statements, action is initiated by our Office. Let me relate a recent example of such a situation. A major Florida land sales organization's annual financial report disclosed a substantial deficit in retained earnings. Upon receipt of this information, OILSR took action on April 18, 1973, to require the developer to amend his statement of record and property report for federally registered subdivisions to disclose the company's questionable financial condition and the potential effect on purchasers. Since the developer had other subdivisions filed with us through the State of Florida, we also contacted the Florida Division of Land Sales to seek its cooperation in requiring amendments to the Florida public offering statement. Acting on this information, Florida is also considering whether it will require appropriate amendments to the developer's State filing for the protection of purchasers. If appropriate action is not taken by Florida, OILSR will institute proceedings leading to suspension of this filing for Federal purposes.

Since the effective date of the act, we have notified some 150 Florida subdivisions not registered with OILSR that they appear to be subject to the act. In addition, six Florida developments were required to offer refunds to over 1,000 purchasers who bought land in unregistered subdivisions. We are presently investigating a large Florida developer with respect to the adequacy of disclosure in a number of its filings. Another major investigation was recently made because of the substantial number of purchasers' complaints submitted to OILSR concerning fradulent or deceptive sales practices.[10] As a routine enforcement action, we have a continuous program of referring customer complaints throughout the U.S. to the developers involved. This action frequently results in refunds for purchasers who have been victimized by overzealous salesmen.

Your invitation to testify on these matters today addressed certain issues with respect to ITT's Palm Coast subdivision. The developers of Palm Coast have an effective statement of record filed with OILSR through the acceptance and certification of the State of Florida.[11] Prior to receipt of this committee's communication, the Office of Interstate Land Sales Registration was not aware of the specific conditions surrounding the subdivision's canal system as set forth by the Florida Department of Pollution Control. These conditional requirements are not disclosed in the Florida public offering statement nor in any other material accompanying the State filing.[12] After ascertaining the foregoing, following receipt of the committee's letter, we alerted Florida's Division of Land Sales concerning the conditional approvals for operating the canals in the Palm Coast subdivision, and we have requested copies of pertinent correspondence to determine if additional disclosure by the developer is warranted.[13] If we determine such disclosure is necessary, and Florida does not require it, our Office will take actions to secure full disclosure—the alternative being suspending the registration of Palm Coast.

The Interstate Land Sales Full Disclosure Act does not contain direct authority to regulate advertising as such, and we therefore do not, as a practice, review such materials. Nor do our existing regulations establish criteria or standards relating to pamphlets, brochures, and other such material.[14] It should be noted,

[10] Responds to question 3(c).
[11] Responds to question 4(a) and 4(b).
[12] Responds to question 4(c)1.
[13] Responds to question 4(d).
[14] Responds to question 4(e)2.

however, that section 1404 of the act prohibits any transaction, practice or course of business which operates as a fraud or deceit upon a purchaser. This prohibition can certainly be interpreted to cover advertising if it can be shown to be fraudulent. Based on the experience we have garnered in the past year and in recognition of the fact that advertising may fall short of fraud but still serve to mislead the public, we have taken steps to tighten our regulations.

The proposed changes that I refer to add a new section intended to exercise some control over advertising. Specific prohibitions include advertising that is false and misleading, advertising which omits material facts necessary to avoid being misleading, and advertising which is inconsistent with the HUD filing.

At the present time, the property report given to the prospective purchaser contains a disclaimer that HUD has not inspected nor approved the subdivision. We have expanded this disclaimer to include a statement that HUD has not passed upon the value of the property as an investment and that it is unlawful for the developer's agents or salesmen to make any statement implying that registration means Federal approval of the subdivision. Further, we propose to require that OILSR's address be included in the property report, with instructions to the purchaser to notify us in the event any such misrepresentations about HUD approval are made.

The revised regulations also would prohibit any reference in the property report to the developer's past performance in other subdivisions, business reputation, or the investment potential of the land, unless such reference is negative in nature. The property report would be further expanded to disclose to the purchaser what the effect would be if the developer fails to obtain permits or licenses or to fulfill financial obligations. It would also warn of complications that could result from pending litigation.

The new property report would also clearly advise purchasers of the possibility that they may have to complete the contract even though the developer defaults and the purchaser ultimately loses all rights to the land. Additionally, the revised property report would advise the purchaser of such potential conflicts of interest by the developer as his absolute control of the property owners association, utility districts, and architectural committees.

The related and specific steps we are taking relative to full disclosure in the field of advertising are major. Like the property report, any advertisement would have to contain a disclaimer stating that HUD neither recommends nor approves of the merits of the offering nor the value of the property as an investment. A statement would also be included in the advertisement making prospective purchasers aware that they are entitled to a property report. Very significantly, representations made in oral presentations or written advertisements would have to indicate whether the representations are factual. Proposed improvements would be described as such, and artist's conceptions in printed material would be so labeled.

I would like to discuss with you briefly some of the other proposed changes in our regulations. There is currently a statutory exemption from the act covering on-site purchases where information is furnished by the developer establishing that his lots are subject to no liens, encumbrances, or reservations. We have found that our present regulations on the required documentation do not produce sufficient information for the effective protection of the consumer, and we hope that the proposed regulation will solve that problem.

We also believe that the statement of record required by our current regulations does not provide sufficient information to us or to the purchaser relative to the developer's filings with the SEC and State authorities; parent and subsidiary corporations; previous violations of law; bankruptcies; or, as I have discussed, governmental licenses, permits, and approvals that are required to develop the subdivision. Additionally, we do not believe we and the consumer obtain sufficient information with respect to purchasers' rights in the event of foreclosure, lot exchange arrangements, resale provisions, and current litigation. All of these areas would be tightened up by our revised regulations.

Another amendment to our regulations would require in the statement of record a more definitive disclosure of the developer's plans for improvements and would require him to state his intent to be obligated for completion of the facilities and improvements promised in the property report. This formal representation of intention could greatly expand the rights of the purchaser if the developer subsequently did not fulfill his obligations.

Another significant revision is a proposed requirement that any waiver of a purchaser's rescission rights must be contained in a document separate from the

sales contract. Our experience indicates that a great number of purchasers have unknowingly waived their 48-hour rescission period simply because they did not read the fine print in the contract.

One of the weakest areas in our regulations to date has been in the financial statement area. Anyone could prepare the required financial statements and generally would present them in the most favorable light possible for a given subdivision. Our new regulations would require any development having a lot sales program in excess of $300,000 a year to submit a financial statement, certified by a licensed accountant to be in accordance with generally accepted accounting principles, at the time of registration.

In addition to these administrative actions, we are presently considering the need for legislative changes in the act. I am not in a position at this time to present any firm conclusions but I would like to touch on several of the problems we are concerned with in reviewing the adequacy of the act.

One of these problems, of course, has to do with the right of rescission and the effectiveness of the existing provision permitting a buyer to revoke an agreement when he has not received a timely property report. The Congress considered this problem in connection with the HUD proposal in the housing bill that was passed by the Senate and reported by the Banking and Currency Committee last year. As you know, that bill would have provided for an extension of the revocation period from 48 hours to 72 hours, and would have eliminated provisions allowing buyers to waive their rights to rescind. In light of the continuing evidence of the need for an adequate cooling off period, we are considering not only the resubmission of these changes but also whether last year's amendments went far enough.

Another problem area has to do with enforcement and remedies. For example, we are concerned about the fact that, despite the severe penalties for failing to register, many developers are still willing to ignore the disclosure law, apparently hoping they'll never be caught, or gambling that they can stand the penalties if they are caught.

Still another problem area is suggested by the complaints we have heard over and over again that what the salesman promised in the way of investment or other potential of the land often turned out to be nothing more than a figment of his imagination. Many witnesses at our hearings were told that the land they were buying could not fail to appreciate substantially in value in a short period of time. Not only did many of the salesmen's promises never come to pass, often there was no way to hold developers accountable for them.

As this committee is aware, the Interstate Land Sales Full Disclosure Act is a disclosure statute and does not vest broad regulatory powers in the Federal Government.

Consequently, our statutory interest in environmental questions in Florida and elsewhere is primarily one of disclosure rather than substance. As I indicated in my testimony before the Banking and Currency Committee, we have urged the States to enact subdivision control laws to insure the development of quality subdivisions and sound land use planning. This responsibility for regulations, I believe, properly belongs at the State and local level.

On the basis of the past year's experience, including our hearings around the country, the complaints we have been receiving, and in view of the publication of our proposed regulations which would tighten the Federal requirements, we have raised the question with Florida and the other three States whose filings we accept, whether such acceptance should continue. We shall consider the information produced by this committee in making any final determination as to whether Florida subdivision regulation adequately protects the consumer.

Hopefully, a more effective regulatory role on the part of the States, backed by forceful disclosure action by HUD and environmental roles vested various other agencies, will achieve the substantive improvement in the quality of subdivisions that we all expect.

Mr. FASCELL. Thank you very much, Mr. Bernstein. The State agency, of course, can make whatever corrections or amendments are necessary to deal with those problems; can't it?

Mr. BERNSTEIN. Certainly.

Mr. FASCELL. Once they undertake to do that, if you approve it, that meets all the requirements of the law; doesn't it?

Mr. BERNSTEIN. If there is full disclosure, yes.

Mr. FASCELL. You don't have to act independently of the State agency unless you have some reason to believe that the State agency is not going to act?

THE NEW REGULATION

Mr. BERNSTEIN. I'm only trying to state the limits of our responsibility. I cannot pass the buck beyond that.

If Florida does not act to our satisfaction, we have the responsibility to act. We have proposed new regulations that we published on May 4 as a result of these hearings. The new regulations are far tougher in terms of disclosure, filing financial information, covering advertising in many cases—they are much tougher than our old ones.

We have written to the four States whose filings we have accepted, and said to them that we are not sure that we should continue to accept their filings. We asked them to advise us how their registration requirements measure with our new proposed ones.

Mr. FASCELL. I think this system is all right, in my own opinion, as long as they qualify and they have their enforcement. And you are satisfied that they are doing it. You have to give them that opportunity.

It seems to me in the first instance you were correct. Do you have any reason to believe the State agency won't act with respect to their problems?

Mr. BERNSTEIN. There is no reason to believe that.

Mr. FASCELL. As a matter of precaution, are you making your own independent decision?

Mr. BERNSTEIN. Yes; we've had great cooperation from the Florida people.

Mr. FASCELL. Mr. Gude?

Mr. GUDE. No questions.

Mr. FASCELL. Mr. Chairman?

PALM COAST, FLA., REGISTRATION

Mr. REUSS. Mr. Bernstein, on page 8 of your statement, you referred to some matters with respect to ITT's Palm Coast, Fla., subdivision, and you say on that page:

> The developers of Palm Coast have an effective statement of record filed with OILSR through the acceptance and certification of the State of Florida.

What is the date of that statement of record?

Mr. BERNSTEIN. The original filing was effective April 28, 1970. There have been several pages of consolidation since that date, the most recent of which was an amendment effective May 2, 1973. None of these have disclosed the information that this committee has brought to our attention.

Mr. REUSS. Is my understanding correct that your office and the Federal Department of Housing and Urban Development do not require that a filing be made with HUD, but instead accept a filing made with the Florida Land Sales Division?

Mr. BERNSTEIN. Not exactly. The actual initial filing is made by the company with a subdivision located in one of those four States—Florida, in this case, with the Florida Land Sales Division.

If the Florida Land Sales Division finds that that filing meets its substantive requirements—and it has a list of requirements very similar to our old requirements—it accepts that filing for Florida purposes for the sale in the State of Florida and certifies to us that it has done so.

In addition, at that point the developer must put a HUD disclaimer on the front of the Florida offering statement that says in effect that HUD has not passed on the merits of this, and the filing with Florida through HUD does not mean acceptance by the Federal Government; in addition to which, the contract must provide in it a warning of certain rescission rights which the purchaser has under Federal law.

But the fact that Florida paperwork is accepted by us with this addition does not mean that we do not then get the physical Florida filing or that we are not able to act on specific complaints. We have acted when matters come to our attention, saying "regardless of what is said in there, it is not the fact."

We then follow it up, and we have in a number of cases forced Florida developers registered with us, through Florida, to amend their Florida offering statement.

THE CASE AGAINST PALM COAST

In this case—the Palm Coast situation—if it bears out, we would probably require an amendment, and we expect Florida would require that amendment. And we would then continue to accept the registration.

Mr. REUSS. According to evidence in our file, furnished to us by various Federal Government agencies, during 1971 ITT conducted certain illegal land operations in the Palm Coast area—that is, without obtaining required permits from the Corps of Engineers.

Does any disclosure concerning that illegality occur in filings made by ITT with either the Florida agency or with HUD?

Mr. BERNSTEIN. Not to our knowledge. It has been reviewed and our people did not find that.

Mr. REUSS. I believe it is true that during the course of our staff investigation into this matter, you were made aware of the fact that in February and March of 1972, the Florida Department of Pollution Control imposed certain conditions on ITT with respect to the canals it was constructing.

Could you state whether or not ITT, in statements filed either with the Florida Division of Land Sales or with HUD, disclosed that the Florida Pollution Control Department imposed those conditions in February and March of 1972?

Mr. BERNSTEIN. Not as of the date of the last amendment with us. It was your committee that brought it to our attention for the first time.

Mr. REUSS. The date of the last amendment was May 2, 1973?

Mr. BERNSTEIN. Yes.

Mr. REUSS. On May 2, 1973—that very date—the Department of Pollution Control of the State of Florida wrote a letter to ITT Community Development Corp., signed by Barry Lessinger, attorney for the department, which letter has been made a part of the record of this case. It informed ITT that it had failed to comply with certain

requirements imposed by the Florida Department of Pollution Control back in February and March 1972, including such matters as the failure of ITT to monitor the conditions on its land and water development.

Was any public disclosure made of that fact, either with the Florida Division of Land Sales or with HUD?

[NOTE.—The data referred to by Congressman Reuss are printed with the materials submitted by Mr. Baljet, app. 10, pp. 2346–2353.]

Mr. BERNSTEIN. Not to my knowledge to Florida, and we have not received it. But I would assume, just from the standard operation—I don't want to speak for Florida, except that we should be able to say that if we didn't get it, Florida has not gotten it, because we should get everything Florida gets.

Mr. REUSS. Did you recently write the Florida Division of Land Sales for certain information concerning the ITT Palm Coast development?

Mr. BERNSTEIN. Yes, we did.

Mr. REUSS. What was the date of that letter?

Mr. BERNSTEIN. Actually, we spoke to them on the telephone on the 10th and on the 16th, and we received a letter——

Mr. REUSS. Of what?

Mr. BERNSTEIN. May of 1973; and we received a letter back from them dated May 17 from Mrs. Marian Kersey indicating that they are looking into the matter. And they sent us copies of pertinent information including a letter to the Florida people dated May 16, raising questions on that date.

Also, the Board of Trustees of the Internal Improvement Trust Fund forwarded to us a letter from Palm Coast, Y. S. Prichett, vice-president, discussing those problems.

We can submit those for the record with all the attachments.

Mr. REUSS. Without objection, that will be received in the record.

[The data referred to in the above colloquy between Chairman Reuss and Mr. Bernstein follow:]

State Of Florida
DEPARTMENT OF BUSINESS REGULATION
Division Of Florida Land Sales
2942 W. COLUMBUS DRIVE
PHONE: 813/877-6301
P. O. BOX 4448
TAMPA, FLORIDA 33607

REUBIN O'D. ASKEW
GOVERNOR

May 17, 1973

IN REPLY REFER TO:
ITT Community Development Corporation
Palm Coast

Mr. Allen Kappeler
Office of Interstate Land Sales
Registration
HUD Building
Washington, D. C. 20411

Attn: Mrs. Janet Argent

Dear Mr. Kappeler:

Regarding our telephone conversation yesterday, above subject, I spoke with our Director, Mr. A. L. Baker, who advised that he will inquire about this when our Field Inspector who inspects Palm Coast returns to the office tomorrow or Monday.

In the interim, I am sending you copies of the pertinent Permits, etc., of which we spoke I was able to locate a copy of the February 28, 1972, letter from the Florida Department of Pollution Control to Mr. Pritchard, Vice President, Operations, ITT which is attached to the letter dated March 8, amending it.

Also, enclosed is copy of letter dated May 16, which we received today from the Board of Trustees of the Internal Improvement Trust Fund relative to the latest Registration Application from Palm Coast, which has not been approved as of this date.

When Mr. Baker has had an opportunity to investigate this matter, he will call you to discuss it further.

I trust these documents will be helpful to you, and, if I may assist you in the future, please let me know.

Sincerely,

Marion Kersey

(Mrs.) Marion Kersey
Bureau of Registration

Encls.

ELB

RECEIVED XC JEC REG/S, FILE
MAY 17 10 46 AM '73
DEPT. OF BUS. REGULATION
D.L. LAND SALES
TAMPA, FLA.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 224-2101

May 16, 1973 Note This letter is at variance with Mr Pritchard's letter of 4/10. Ask Katz for expl. ALB 5/17

Mr. A. L. Baker, Director
Department of Business Regulation
Division of Florida Land Sales
Post Office Box 4448
Tampa, Florida 33607

Dear Mr. Baker:

Palm Coast, Units 43, 45, 48, and 49 - Flagler County, Sections 5, 6, 7, 8, 9, 16, and 17, Township 11 South, Range 30 East; Sections 14, 15, 19, 22, 23, 30, and 31, Township 10 South, Range 30 East

On April 27, 1973, representatives from ITT Communities Development Corporation assured members of this and other state agencies that there would be no further canalization within the upcoming units of Palm Coast subdivision to be registered with the Division of Florida Land Sales. It was explained that the state environmental agencies had specific concerns regarding the effect of drainage from Palm Coast Unit 36 into the Pellicer Creek Aquatic Preserve, and that similar concern would be expressed for each of the future units to be registered having comparable characteristics.

Plats provided to this office by Mr. Allen Katz, an attorney for ITT Communities Development Corporation, show Units 43, 45, 48, and 49, as having upland canals bordering upon lots to be registered. These canals appear to drain into another tributary of Pellicer Creek. Permits may be required if these canal systems are to be eventually connected to the navigable waters of the State of Florida. Additional information regarding the specific characteristics of the artificial "waterways" is requested prior to registration with the Division of Florida Land Sales.

? marginal lt

This office objects to the registration of the lands within these units if state and federal permits may be required in order to comply with platted improvements or where contracted agreements promising waterfront property may be made in the sale of these lands.

JK/wpm

cc: Mr. Wade Hopping,
Tallahassee Counsel for
ITT Comunities Development
Corporation, w/enclosure

Sincerely,

Joel Kuperberg,
Executive Director

Palm Coast®

ITT Community Development Corporation

430 Park Avenue
New York, N.Y. 10022
Telephone (212) 751-7800

Elias W. Pritchard
Vice President-Operations

RECEIVED
MAR 19 10 43 AM '73
DEPT. OF BUS. REGULATION
DIV. OF FLA. LAND SALES
TAMPA, FLA.

March 16, 1973

Mr. A.L. Baker, Director
Department of Business Regulation
Division of Florida Land Sales
P.O. Box 4448
Tampa, Florida 33607

Dear Mr. Baker:

In accordance with your previous request I am sending you this quarterly report on the status of our permits for the canal system at Palm Coast.

Since my last letter to you dated January 22, 1973, there has been no change in the status of the permits that were included as attachments to the letter. To bring you up to date on some additional items at Palm Coast, as sort of a progress report, the following has occurred:

a) Our Yacht Club and marina, on which all building permits had been obtained, are now in operation.

b) We have been meeting this past month with the Corps of Engineers on our application for removal of nine plugs for entry into a segment of our canal area. As I indicated earlier, we have the State Department of Pollution Control certification (sent to you with our last letter) for this work and the Corps permit (also sent to you) for the major cut we made from the Intracoastal area to our designated canal area.

c) We are continuing our construction of the motel on our beachfront property and expect completion of this facility toward the end of the summer. All permits regarding beach setback limitations had been obtained for this facility before construction began.

As I have indicated, we are continuing our policy of obtaining all permits for construction in advance of their actual need. I will submit the next quarterly report to you on or about June 15, or if any material change occurs before that time. I hope that this letter provides you with the information that your department requires, but should you have any further questions, please do not hesitate to write.

Cordially,

E. W. Pritchard

EWP:hg

Vice President–Operations

PalmCoast®

ITT Community Development Corporation

430 Park Avenue
New York, N.Y. 10022
Telephone (212) 751-7800

Elias W. Pritchard
Vice President-Operations

January 22, 1973

Mr. A. L. Baker, Director
Department of Business Regulation
Division of Florida Land Sales
P.O. Box 4448
Tampa, Florida 33607

Dear Mr. Baker:

In accordance with your request, I have had our people gather together the pertinent data concerning the connection of our canal systems with the Intracoastal Waterway.

You will note that there are three separate permits from the Corps of Engineers, one for each of the connections to the Intracoastal Waterway, plus one permit from the Board of Trustees of the Internal Improvement Trust Fund which covers three connections.

Also included are two letters from the Department of Pollution Control signifying their approval of our canal systems now under construction.

I feel that this will provide you with all the information that you requested, but if you do have further questions, please do not hesitate to write.

Cordially,

E. Pritchard

EP:ah
w/attachment

Vice President—Operations

Corps of Eng. dredge disp.

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING
TALLAHASSEE, FLORIDA 32304

CLAUDE R. KIRK, JR.
Governor
TOM ADAMS,
Secretary of State
EARL FAIRCLOTH,
Attorney General
FRED O. DICKINSON, JR.
Comptroller
BROWARD WILLIAMS,
Treasurer
FLOYD T. CHRISTIAN,
Commissioner of Education
DOYLE CONNER,
Commissioner of Agriculture

MAS W. APTHORP
Executive Director
Phone 224-2161

February 17, 1970

FEB 18 1970
ADMIN. SERV.

District Engineer
Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32201

Dear Sir:

SAJSP Permit (69-007). Flagler County

This is to advise that after review of your notice, this office has no objection to issuance of the requested permit.

Sincerely,

Fred Vidzes

Fred Vidzes, Director
Land Management Division

FV:dgb
Attachments
cc: ITT-Levitt Development Corp.

BAC

xc: Mr. Bedwell, 2/18/70

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
FEDERAL BUILDING, P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

PERMIT

SAJSP Permits (70-706)

District Engineer, Corps of Engineers
Jacksonville, Florida
28 December 1970

ITT Levitt Development Corporation
P. O. Box 878
Flagler Beach, Florida 32036

Gentlemen:

Referring to written request dated 26 October 1970, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899 (33 U.S.C. 403), entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army

to construct a bulkhead and to excavate a canal, excavated material to be deposited on the upland and retained,

in the Intracoastal Waterway, Jacksonville to Miami, Land Cut, Matanzas River to Smith Creek, westerly shore,

approximately 2 miles north of St. Joe Canal in Sec. 32, Twp. 10 S., Rge. 31 E., Flagler County, Florida,

in accordance with the plans and drawings attached hereto marked: Proposed Waterway into Intracoastal Waterway,

subject to the following conditions:

(a) That this instrument does not convey any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining State or local assent required by law for the structure or work authorized.

(b) That the structure or work authorized herein shall be in accordance with the plans and drawings attached hereto and construction shall be subject to the supervision and approval of the District Engineer, Corps of Engineers, in charge of the District in which the work is to be performed.

(c) That the District Engineer may at any time make such inspections as he may deem necessary to assure that the construction or work is performed in accordance with the conditions of this permit and all expenses thereof shall be borne by the permittee.

(d) That the permittee shall comply promptly with any lawful regulations, conditions, or instructions affecting the structure or work authorized herein if and when issued by the Federal Water Quality Administration and/or the State water pollution control agency having jurisdiction to abate or prevent water pollution, including thermal or radiation pollution. Such regulations, conditions or instructions in effect or hereafter prescribed by the Federal Water Quality Administration and/or the State agency are hereby made a condition of this permit.

(e) That the permittee will maintain the work authorized herein in good condition in accordance with the approved plans.

(f) That this permit may, prior to the completion of the structure or work authorized herein, be suspended by authority of the Secretary of the Army if it is determined that suspension is in the public interest.*

(g) That this permit may at any time be modified by authority of the Secretary of the Army if it is determined that, under existing circumstances, modification is in the public interest.* The permittee, upon receipt of a notice of modification, shall comply therewith as directed by the Secretary of the Army or his authorized representative.

(h) That this permit may be revoked by authority of the Secretary of the Army if the permittee fails to comply with any of its provisions or if the Secretary determines that, under the existing circumstances, such action is required in the public interest.*

(i) That any modification, suspension or revocation of this permit shall not be the basis for a claim for damages against the United States.

(j) That the United States shall in no way be liable for any damage to any structure or work authorized herein which may be caused by or result from future operations undertaken by the Government in the public interest.

(k) That no attempt shall be made by the permittee to forbid the full and free use by the public of all navigable waters at or adjacent to the structure or work authorized by this permit.

(l) That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

(m) That the permittee shall notify the District Engineer at what time the construction or work will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of its completion.

(n) That if the structure or work herein authorized is not completed on or before the 31st day of December 1973 , this permit, if not previously revoked or specifically extended, shall cease and be null and void.

(o) That the legal requirements of all Federal agencies be met.

(p) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require action by the Congress or other agencies of the Federal Government.

(q) That all the provisions of this permit shall be binding on any assignee or successor in interest of the permittee.

(r) That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to the interests in real property.

(s) That the permittee agree to make every reasonable effort to prosecute the construction of work authorized herein in a manner so as to minimize any adverse impact of the construction or work on fish, wildlife and natural environmental values.

(t) That the permittee agrees that it will prosecute the construction of work authorized herein in a manner so as to minimize any degradation of water quality.

A judgment as to whether or not suspension, modification or revocation is in the public interest involves a consideration of the impact that any such action or the absence of any such action may have on factors affecting the public interest. Such factors include, but are not limited to navigation, fish and wildlife, water quality, economics, conservation, aesthetics, recreation, water supply, flood damage prevention, ecosystems and, in general, the needs and welfare of the people.

By authority of the Secretary of the Army:

for A. S. FULLERTON
Colonel, Corps of Engineers
District Engineer

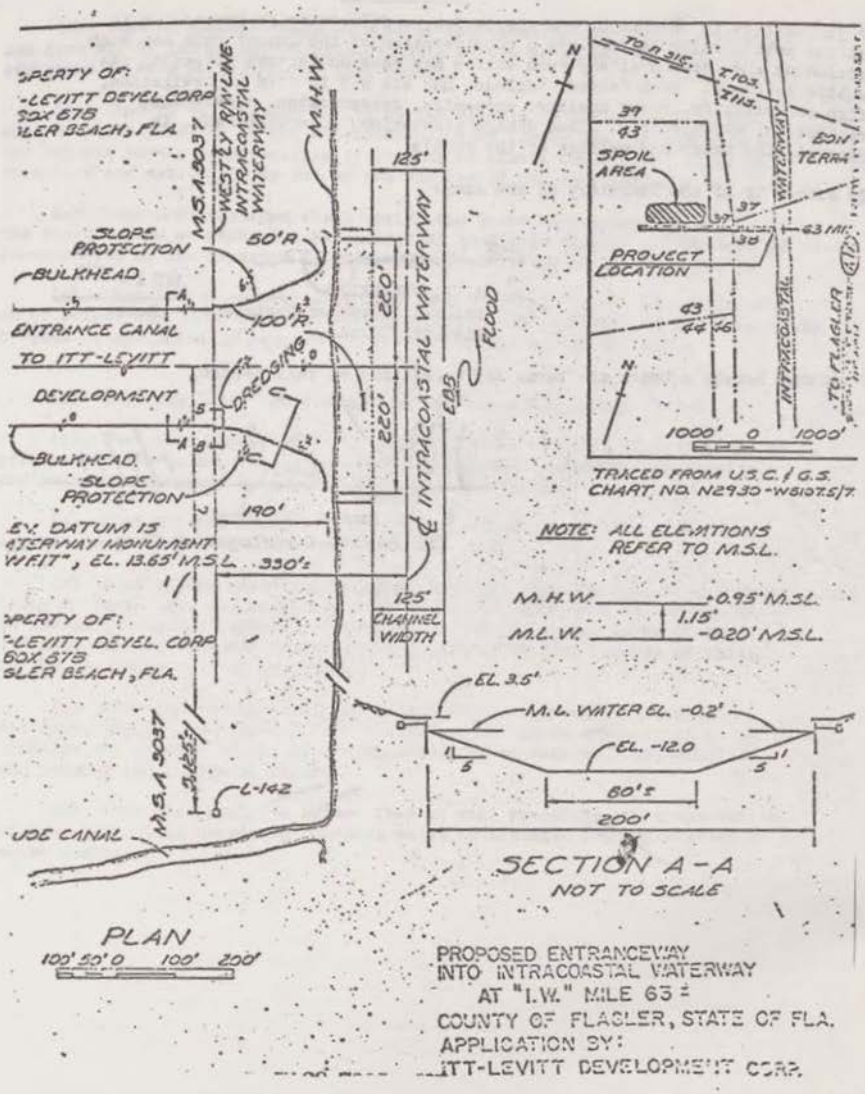
JAN 11 1971
Date

Permittee hereby accepts the terms and conditions of this permit.

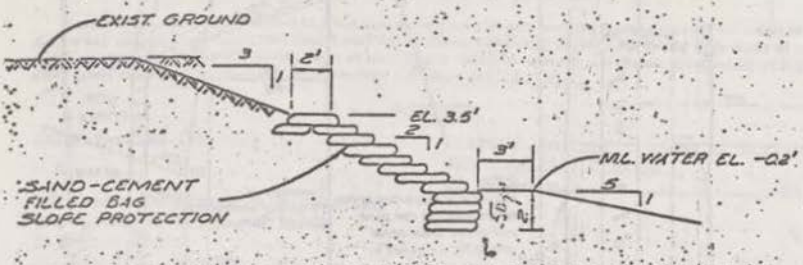
Permittee

1/7/71
Date

N. C. Kamuf, V. Pres.
ITT Levitt Development Corp.

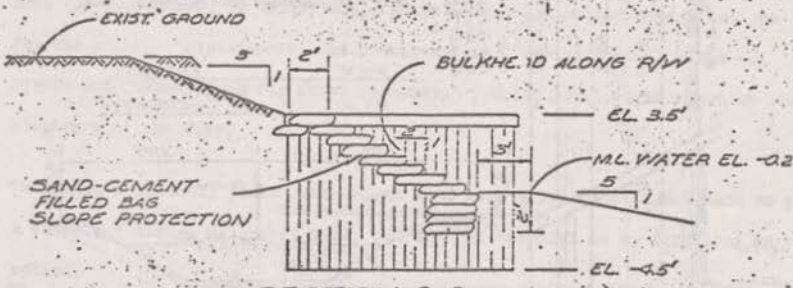


PROPOSED ENTRANCEWAY
INTO INTRACOASTAL WATERWAY
AT "I.W." MILE 63 ±
COUNTY OF FLAGLER, STATE OF FLA.
APPLICATION BY:
ITT-LEVITT DEVELOPMENT CORP.



SECTION C-C

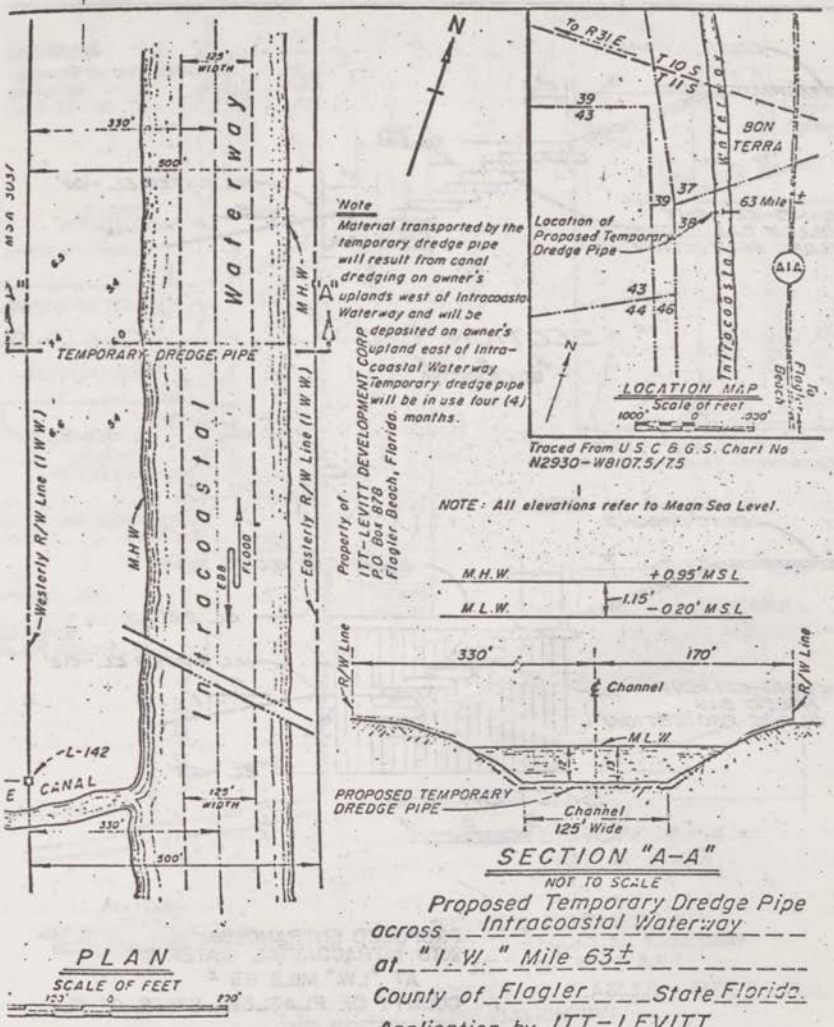
3' 0 3'



SECTION B-B

3' 0 3'

PROPOSED ENTRANCEWAY
INTO INTRACOASTAL WATERWAY
AT "I.W." MILE 63 ±
COUNTY OF FLAGLER, STATE OF FL
APPLICATION BY:
FIT-LEVITT DEVELOPMENT CORP.



Proposed Temporary Dredge Pipe
across Intracoastal Waterway
at "I.W." Mile 63±
County of Flagler State Florida.
Application by ITT-LEVITT

DEPARTMENT OF THE ARMY

NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining *State assent* to the work authorized. (See *Cummings* v. *Chicago*, 188 U.S., 410.)

PERMIT

SAJSP Permits (69-897)

District Engineer, Corps of Engineers.
Jacksonville, Florida
25 February, 19 70

ITT-Levitt Development Corporation
c/o Reynolds, Smith and Hills
P. O. Box 4850
Jacksonville, Florida 32201

Gentlemen:

Referring to written request dated 8 January 1970,

I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army,

to dredge a channel, place sand-cement sand bags along canal banks, and to place
(Here describe the proposed structure or work.)
a temporary dredge discharge pipe, the dredged material to be deposited on your upland,
in
(Here to be named the river, harbor, or waterway concerned.)
in to connect with Intracoastal Waterway, Jacksonville to Miami, Land Cut, Matanzas River to Smith Creek,

at your property in Sec. 38, Twp. 11 S., Rge. 31 E., approximately one mile north
(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)
of St. Joe Canal in Flagler County, Florida,

in accordance with the plans shown on the 3 drawings attached hereto marked:
(Or drawings; give file number or other definite identification marks.)
Proposed Entranceway

subject to the following conditions:

(a) That the work shall be subject to the supervision and approval of the District Engineer, Corps of Engineers, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material in the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interest of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required upon due notice from the Secretary of the Army, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of the Army may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U.S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before the 31st day of December, 19 73 this permit, if not previously revoked or specifically extended, shall cease and be null and void.

(k) That the permittee shall comply promptly with any regulations, conditions, or instructions affecting the work hereby authorized if and when issued by the Federal Water Pollution Control Administration and/or the State water pollution control agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions, or instructions in effect or prescribed by the Federal Water Pollution Control Administration or State agency are hereby made a condition of this permit.

By authority of the Secretary of the Army:

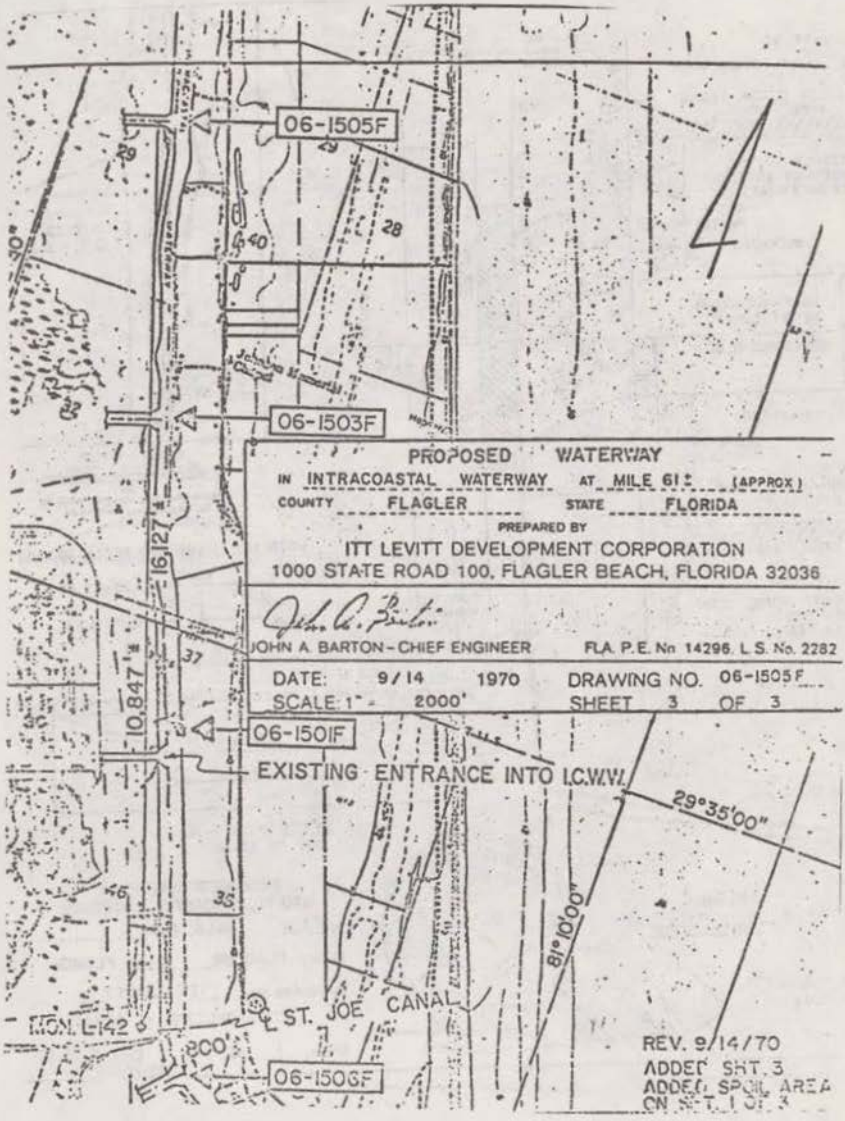
for A. S. FULLERTON
Colonel, Corps of Engineers
District Engineer

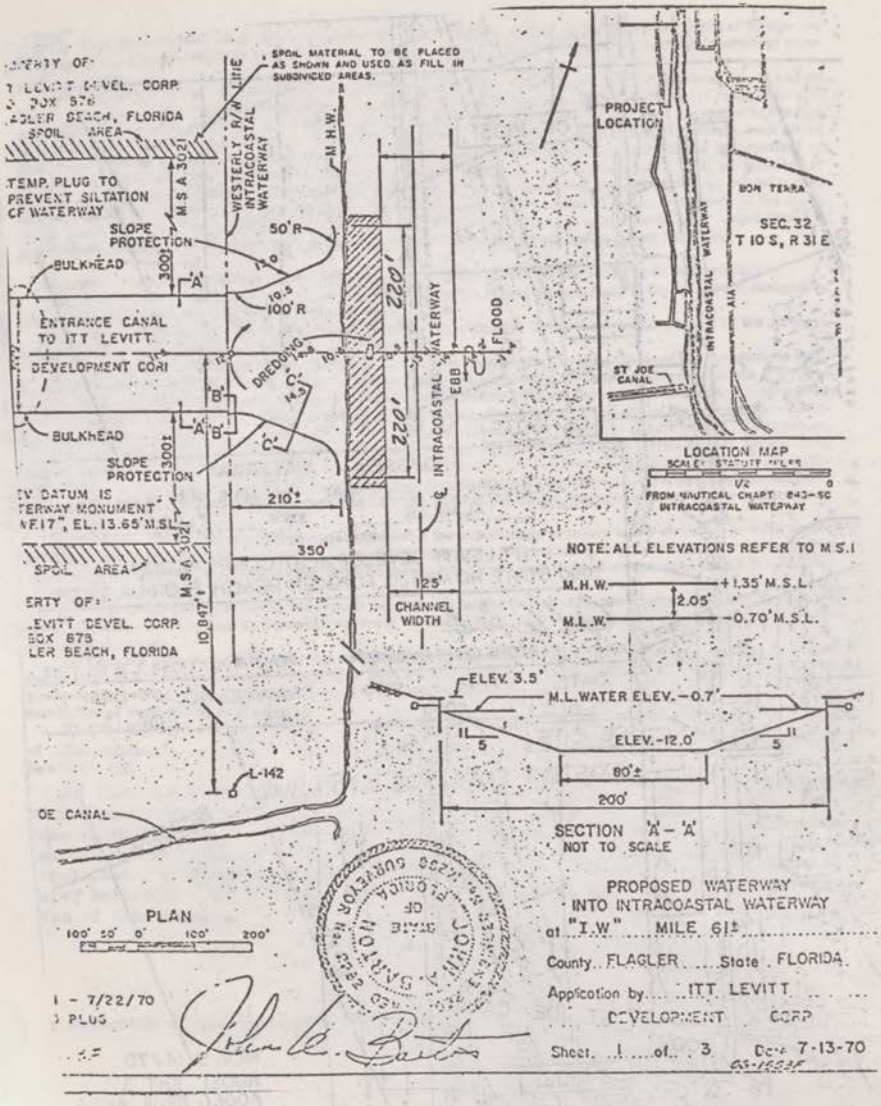
1721

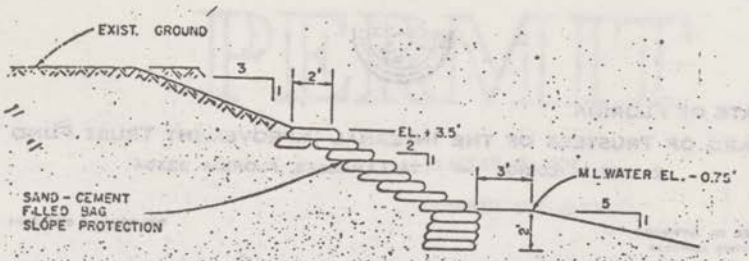
Replaces edition of 1 Sep 48, which is obsolete. (ER 1145-2-303)

U.S. GOVERNMENT PRINTING OFFICE : 1966—O 212-240

TURN CUT NATION SET

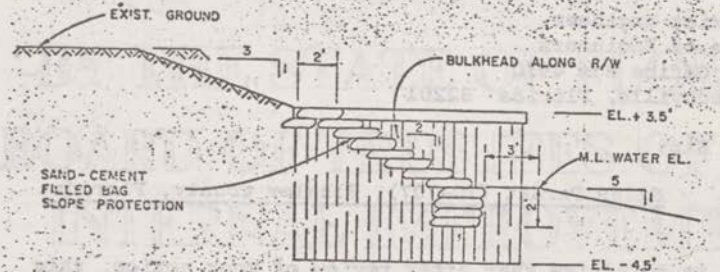

06-1505F
06-1503F
PROPOSED WATERWAY
IN INTRACOASTAL WATERWAY AT MILE 61± (APPROX.)
COUNTY FLAGLER STATE FLORIDA
PREPARED BY
ITT LEVITT DEVELOPMENT CORPORATION
1000 STATE ROAD 100, FLAGLER BEACH, FLORIDA 32036
JOHN A. BARTON - CHIEF ENGINEER FLA. P.E. No. 14296. L.S. No. 2282
DATE: 9/14 1970 DRAWING NO. 06-1505F
SCALE 1" = 2000' SHEET 3 OF 3
06-1501F
EXISTING ENTRANCE INTO I.C.W.W.
29°35'00"
81°10'00"
ST. JOE CANAL
MON. L-142
800'
06-1506F
REV. 9/14/70
ADDED SHT. 3
ADDED SPOIL AREA
ON SHT. 1 OF 3
16,127'
10,847'


SPOIL MATERIAL TO BE PLACED AS SHOWN AND USED AS FILL IN SUBDIVIDED AREAS.
SPOIL AREA
TEMP. PLUG TO PREVENT SILTATION OF WATERWAY
WESTERLY R/W LINE INTRACOASTAL WATERWAY
M.H.W.
M.S.A. 302'
SLOPE PROTECTION
BULKHEAD
300'
'A'
50'R
100'R
ENTRANCE CANAL TO ITT LEVITT DEVELOPMENT CORP
DREDGING
220'
INTRACOASTAL WATERWAY
EBB
FLOOD
BULKHEAD
SLOPE PROTECTION
210±
350'
125'
CHANNEL WIDTH
SPOIL AREA
M.S.A. 302'
10,847'±
L-142
OE CANAL
PROJECT LOCATION
BON TERRA
SEC. 32 T 10 S, R 31 E
INTRACOASTAL WATERWAY
A1A
ST JOE CANAL
LOCATION MAP
SCALE: STATUTE MILES
FROM NAUTICAL CHART 843-SC INTRACOASTAL WATERWAY
NOTE: ALL ELEVATIONS REFER TO M.S.L.
M.H.W. +1.35' M.S.L.
2.05'
M.L.W. -0.70' M.S.L.
ELEV. 3.5'
M.L. WATER ELEV. -0.7'
ELEV. -12.0'
80'±
200'
SECTION 'A' - 'A'
NOT TO SCALE
PLAN
100' 50' 0' 100' 200'
PROPOSED WATERWAY
INTO INTRACOASTAL WATERWAY
at "I.W." MILE 61±
County FLAGLER State FLORIDA
Application by ITT LEVITT DEVELOPMENT CORP
Sheet 1 of 3 Date 7-13-70



SECTION C-C

3' 0 3'



SECTION B-B

3' 0 3'

PROPOSED WATERWAY
INTO INTRACOASTAL WATERWAY
at "I.W." MILE 61

County FLAGLER State FLORIDA

Application by ITT LEVITT
DEVELOPMENT CORP.

Sheet 2 of 3 Date 7-30

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

JAMES W. APTHORP
EXECUTIVE DIRECTOR

TELEPHONE 224-2101

December 8, 1970.

District Engineer
Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32201

Dear Sir:

SAJSP Permit (70-707), Flagler County, Florida

This is to advise that after review of your notice, this office has no objection to issuance of the requested permit.

Sincerely,

Fred Vidzes

Fred Vidzes, Director
Land Management Division

FV:dgb

Enclosures

cc: ITT Levitt Development Corporation

PERMIT

FLAGLER COUNTY

OCTOBER 19, 1970

ISSUED TO: ITT Levitt Development Corporation
Post Office Box 878
Flagler Beach, Florida 32036
DREDGE PERMIT NO. 253.123-666
EXPIRATION DATE: OCTOBER 13, 1973,
OR UPON COMPLETION OF WORK,
WHICHEVER OCCURS FIRST.

BY THE STATE OF FLORIDA
BOARD OF TRUSTEES OF TH
INTERNAL IMPROVEMENT
TRUST FUND

JAMES W. APTHORP,
EXECUTIVE DIRECTC

For Office Use: [illegible]

Permit No. 253.123-666

Date October 14,

STATE OF FLORIDA

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

WHEREAS, application by: ITT Levitt Development Corporation
Post Office Box 878
Flagler Beach, Florida 32036

for a permit under the provisions of Chapter 253, Florida Statutes, to perform certain works in the navigable waters of the State of Florida, approved by said State of Florida Board of Trustees of the Internal Improvement Trust Fund at the meeting of

NOW, THEREFORE, this Permit authorizes the above named applicant, hereinafter called Permittee, to perform such works subject to conditions contained herein: to connect three canals 200 feet wide (top cut), 12 feet deep (mean low water), to the Intracoastal Waterway at the following locations: Canal 1 in Section 29, Township 10 South, Range 31 East; Canal 2 in Section 32, Township 10 South, Range 31 East; and Canal 3 in Section 38, Township 11 South, Range 31 East, Flagler County.

1. The proposed work shall be done in the area designated on the map printed on the reverse side hereof;

2. All dredging shall be done in such a manner as to prevent or minimize dispersion of silt and debris and destruction of marine resources in the public waters;

3. If the dredging is being done in other than a meandered body of fresh water, only sand shall be removed. No oyster bars or shell deposits shall be disturbed or undermined by dredging or other operations pursuant to this Permit;

4. The use of draglines or dredges with cutter heads is prohibited in fresh water lakes without special approval in writing from the State of Florida Board of Trustees of the Internal Improvement Trust Fund. The impermeable seal or strata shall not be disturbed;

5. Material removed in construction shall be placed upon the adequately diked spoil disposal area or areas designated on said map;

6. The material removed shall be used only for the improvement of upland property owned by the Permittee and shall not be sold. Under no circumstances shall the Permittee remove more material than authorized by this Permit without specific approval of the State of Florida Board of Trustees of the Internal Improvement Trust Fund;

7. No fill shall be made on the water side of the original natural ordinary or mean high water mark. This Permit conveys no title to land or water, and does not constitute authority for the reclamation of water bottom unless herein provided;

8. Extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This Permit authorizes no invasion of private property or rights in property;

9. This Permit is granted subject to the rights of the United States in navigable water, and shall be subject, further, to the rights of the public in boating, bathing, fishing, and other rights for which purposes the waters and submerged land thereunder are held by the State. This Permit does not relieve the Permittee from requirement of permit from the U.S. Army Corps of Engineers nor from necessity of compliance with all applicable local laws, ordinances, and zoning or other regulations;

10. Permittee, in accepting this Permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the State of Florida Board of Trustees of the Internal Improvement Trust Fund harmless from all claims of damage arising out of operations conducted pursuant to this Permit;

11. This Permit is granted subject, further, to the following special terms and conditions:

the work authorized is not completed on or before the 13th day of tober, 1973, this authorization, if not previously revoked or ecifically extended, shall cease and be null and void.

At the Trustees' option applicant may be required to furnish a cross-section profile map with certification thereof by a registered Professional Engineer or Land Surveyor, stating that all work performed pursuant to this permit, such certification to be furnished within 90 days after completion of project or expiration of permit, whichever is earlier.

A copy of this Permit shall be posted in a conspicuous place on the equipment being used in the dredging operation or shall be readily available for inspection at the project site by all duly constituted law enforcement officers having jurisdiction. This Permit shall become effective upon receipt by the Permittee and receipt of the executed copy by the State of Florida Board of Trustees of the Internal Improvement Trust Fund, Tallahassee, Florida 32304.

Dated this 2nd day of October, 19 73

STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

By James W. Watts
Executive Director

PERMITTEE

NAME & TITLE

This permit is not valid unless seal of Board of Trustees of the Internal Improvement Trust Fund appears on the attached copy.

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

KENT D. PATTON
EXECUTIVE DIRECTOR

DAVID H. LEVIN
CHAIRMAN

March 8, 1972

Flagler County IW
Palm Coast Project
(ITT Community Development Corporation)
Canal System

2ND - AMENDED

Mr. E. W. Pritchard
Vice President, Operations
1345 Avenue of the Americas
New York, New York 10019

Dear Mr. Pritchard:

Reference is made to permit to operate applications and attached copies of Water Quality Engineering Study of Palm Coast Canals relative to the Palm Coast Project Canal System, and our letter of February 28, 1972, indicating our acceptance of the Palm Coast Project Canal System subject to certain specified conditions.

As a revision to our letter of February 28, 1972, the canal system presently under construction (as shown in ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 7, 1972) is acceptable to this Department subject to the following:

1. Waters from canals as construction is completed and from the Intracoastal Waterway shall be monitored as indicated below at stations specified in the ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 2, 1972.

Required Examinations	Frequency & Sampling Depths
Type I Analyses: Dissolved Oxygen, pH, Salinity, Temperature, and Turbidity at Stations No. 1, No. 3, No. 5, No. 7, No. 12, No. 16, No. 18, No. 20, No. 21, No. 22, No. 23, and No. 25.	Continuous at Mid-Depth
Type II Analyses: Dissolved Oxygen, pH, Salinity, Temperature, Turbidity, BOD, Coliform Organisms (MPN), Oils and Greases, Organic Nitrogen, Ammonia Nitrogen, Nitrate Nitrogen, Total Nitrogen, Ortho Phosphates, Total Phosphates, Pesticides, and Herbicides at all stations.	Twice Monthly at Bottom, Mid-Depth and Surface, Except Surface Only for Oil and Grease Samples

Sampling times shall be correlated with tidal conditions.

Monthly operation reports containing results of this monitoring program shall be submitted to the DPC Northeast Florida Regional Office, 4441 Emerson Street, Jacksonville 32207 and this Office.

2. In reference to Chapter 17-4 FAC, the issuance of an operation permit must be based upon actual substantiation that Florida water quality criteria specified in Chapter 17-3 FAC is being complied with throughout the canal system. In this particular case monitoring results for an entire year including the critical summer months, are required by this Department for evaluation toward the issuance of an operation permit.

3. Appropriate permits from the State of Florida Internal Improvement Trust Fund and the Corps of Engineers as well as Public Law 91-224 certification shall be obtained prior to the construction of canals.

4. Portable oxygenation-circulation devices shall be installed in finger coves farthest removed from the Intracoastal Waterway and other points, if necessary to insure compliance with State water quality criteria. Such devices shall be available for utilization whenever needed.

5. Connection of canals to eliminate dead ends is recommended where practical for increasing circulation and improving canal water quality.

6. In addition to the results of monitoring as called for in Item (1), the following shall be submitted to this Department prior to our issuance of an operation permit.

   a. A sketch of a typical portion of the development showing the flow path of run off.

   b. An estimated construction schedule for the uncompleted portions of the canal system as shown in ITT Community Development Corporation Drawing No. 06-1317, sheet 1 of 1.

Your cooperation in this matter will be appreciated.

Sincerely,

W. E. Linne, Acting Chief
Bureau of Permitting

February 28, 1972
Flagler County IW
Palm Coast Project
(ITT Community Development Corporation)
Canal System

Mr. E. W. Pritchard
Vice President, Operations
1345 Avenue of the Americas
New York, New York 10019

Dear Mr. Pritchard:

This will acknowledge receipt of permit to operate applications and attached copies of Water Quality Engineering Survey of Palm Coast Canals relative to the Palm Coast Project canal system presently under construction.

Following a careful review of the material submitted, we find this canal system (as shown in ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 7, 1972) to be acceptable subject to the following:

1. Waters from canals as construction is completed and from the Intracoastal Waterway shall be monitored as indicated below at all stations specified in the ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 2, 1972.

Required Examinations	Frequency
Dissolved Oxygen, pH, Salinity, Temperature, Turbidity	Continuous
BOD, COD, Total Volatile Solids (Suspended and Dissolved), Coliform Organisms (MPN), Alkalinity, Oils and Greases (Surface Samples), Organic Nitrogen, Ammonia Nitrogen, Nitrate Nitrogen, Total Nitrogen, Ortho Phosphates, Total Phosphates, Total Plankton, Pesticides, and Herbicides	Weekly

All samples other than those to be examined for oils and greases shall be collected one foot below the surface, except at Stations No. 1, No. 3, and No. 5 where samples shall be collected at canal bottom as well as one foot below the surface.

Sampling times shall be correlated with tidal conditions. Monthly operation reports containing results of this monitoring program shall be submitted to the U.S. E. P. Florida Regional Office, 4441 Kernen Street, Jacksonville 32207 and this office.

2. In reference to Chapter 17-4 FAC, the issuance of an operation permit must be based upon actual substantiation that Florida water quality criteria specified in Chapter 17-3 FAC is being complied with throughout the canal system. In this particular case monitoring results for an entire year including the critical summer months, are required by this Department for evaluation toward the issuance of an operation permit.

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   a. A sketch of a typical portion of the development showing the flow path of run off.

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Your cooperation in this matter will be appreciated.

Sincerely,

W. E. Linne, Acting Chief
Bureau of Permitting

WEL/wcb
cc: Mr. Ketteringham
Mr. Barnes
Dr. Thabaraj
Mr. Burton

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20410

IN REPLY REFER TO:

MAY 21, 1973

Mr. Albert L. Baker
Director
Division of Land Sales
Department of Business Regulation
P.O. Box 4448
Tampa, Florida 33607

Dear Mr. Baker:

Title XIV of the Housing and Urban Development Act of 1968 authorizes the Secretary to cooperate with State authorities charged with the responsibility of regulating the sale of lots in subdivisions which are subject to the Act.

HUD, by letter dated July 1, 1969, from the Department's General Counsel to Executive Director Murphy of the Florida Land Sales Board, determined to accept Florida filings as complying with the Federal Statute and Regulations.

The passage of almost four years and two major revisions to the Federal Regulations, including the recently proposed amendments, make it necessary for us to determine whether our Office should continue to accept certain state filings.

As the first step in our review, we request your advice as to how the Florida disclosure requirements correspond with those in the proposed HUD Regulations published in the Federal Register on May 4, 1973. We enclose a copy of those Regulations.

After we hear from you, we will be in touch with you to discuss our review and the coordination of future activities of our respective offices.

Sincerely,

George K. Bernstein
Interstate Land Sales Administrator

Enclosure

BACKGROUND DATA FOR RUESS COMMITTEE

Filings with OILSR - 5009
Florida filings with OILSR - 860
Percentage - 17%

7-month Complaint Study

Subdivision Location

Florida	-	355 complaints
Arizona	-	319 complaints
Virginia	-	129 complaints
Texas	-	107 complaints
Pennsylvania	-	93 complaints
California	-	74 complaints
New Mexico	-	72 complaints

17 Public Hearings

Number of Witnesses - 360
Allegations - 792
Type of Allegations---

Oral misrepresentation	-	271	- 34%
Failure to provide improvements	-	103	- 12%
Violation refund privilege	-	105	- 12%
Non-delivery of Property Report	-	64	- 8%

LIST OF ENFORCEMENT ACTIONS

Florida Subdivisions

	Company	Subdivision	Actions Concluded
1.	Wellington- Orient Main, Florida	Enterprise Heights and Timber Ridge	Joint actions with Florida in requring refunds in 9/69 to 141 purchasers who bought lots prior to registration with Florida and OILSR.
2.	American Agronomics Corp. Miami, Florida	Joshua Grove	By OILSR to require refund offer in 12/70 to 397 purchasers who brought lots prior to registration with OILSR.
3.	Holiday Properties, Inc. Dallas, Texas	Holiday Harbor and Gold Coast	By OILSR to require refund offers in 1/71 to 44 purchasers who bought lots prior to registration with OILSR.
4.	Sunshine Gulf Estates, Inc. Inverness, Florida	Sunshine Gulf Estates	By OILSR to require refund offers in 7/71 to 90 purchasers who bought land prior to registration with OILSR.
5.	Gulf Coast Diversified Developers, Inc. Brooksville, Florida	High Point Mobile Homes	By OILSR to require refund offers in 2/72 to 337 purchasers who bought land prior to registration with OILSR.
6.	St. Jude Harbor Ft. Myers, Florida	St. Jude Harbor	By OILSR to require refund offers in 4/73 to 26 purchasers who bought lots prior to registration with Florida and OILSR.

	Company	Subdivision	Actions Pending
1.	GAC Properties, Inc. Miami, Florida	All subdivisions (in Florida and Arizona)	Requiring disclosure of operating loss and deficits of GAC Properties as shown in 1972 Annual Report.
2.	GAC Properties, Inc. Miami, Florida	Remuda Ranch, Florida Golden Gate Estates, Florida	Requiring disclosure of agreement with State of Florida relative to option given State to acquire portions of both subdivisions for conservation areas.
3.	Cavanagh Communities Miami, Florida	All Florida subdivisions	Investigating adequacy of disclosure of problems selative to completion of canals, drainage, filling and other improvements.
4.	Hernando Beach, Inc. Brooksville, Florida	Hernando Beachs	Investigating sales of unregistered lots and problems relative to dredging and filling and litigation by U.S. Attorney, Tampa.
5.	American Agronomics Corp.	Tropical River Groves	Requiring disclosure of SEC civil actions (permanent injunction against developer and agents alleging misrepresentation)

Office of Interstate Land Sales Registration
May 21, 1973

List of Florida Subdivisions
with closed out inquiries
Re: sale of unregistered land[1/]

Belleviews Sunny Skies
Condominium Garden Apartments
Cudjoe Ocean Shores
Emerald Hills
Gold Coast Acres
Green Hills Estates
Hercala Acres
Indian Harbor Estates
Turtle Creek Village
Kimberly Village Estates
Lake Asbury
Lakewood Acres
Land in Lake County
Land in Monroe County
Marlborough Village
Palm Beach Meadows
Shell Harbor
Spring Lake Village IV
Tee & Green Estates
Lake Asbury
Miniature Estates of Florida
Coconut Palm Estates
Forest Lakes Park
Ocala Ridge
Okeechobee Estates
Sugarloaf Shores
Lake Crescent Estates
Pine Forest Manor
El Pico South
Highlands III
Tamarac Lakes, Inc.
Venture Mobile Homes
Warm Mineral Springs
Diversified Land Investments
Paradise Lakes

1/ Either registered, exempt or unable to locate.

Mr. BERNSTEIN. We have not had a chance to review it fully. But our investigators are speaking to some of the people who originated this correspondence in Jacksonville.

Mr. REUSS. Do any of ITT's public disclosures—either with the Florida Division of Land Sales or with HUD—reveal that ITT has applied for an additional Corps of Engineers' land change permit, and that the Environmental Protection Agency or the Department of Interior and other agencies have opposed ITT's request and have asked that an environmental impact statement be prepared?

Mr. BERNSTEIN. Some of that information would be in the material we just gave you that we have not fully reviewed yet. We also understand that in the last day or so, the corps in Washington has reversed the local corps ruling of the requirement or nonrequirement of an environmental impact statement.

That fact would have to be reflected in the statement of record and property report if the public were to be informed.

Mr. REUSS. As far as you know, ITT has not made such a disclosure?

Mr. BERNSTEIN. That is correct.

Mr. REUSS. I show you a letter and brochure recently received in response to a request from the ITT Community Development Corp. to someone referred to as "Dear Friend." And the letterhead says "Palm Coast."

"Dear friend," the letter says, "when was the last time a large corporation invited you to dinner?

"ITT Community Development Corp., a subsidiary of International Telephone & Telegraph Corp., cordially invites you and your spouse to attend a special preview dinner party.

"We are inviting you because we want your opinion of an important project that we are undertaking in Florida, America's fastest growing major State.

"ITT Community Development Corp. plans to develop a very special piece of land on Florida's east coast, and we have asked a select group of successful people, like yourself, to have dinner with us and share a special preview of our Palm Coast property."

Without objection, this document and attachment will be made a part of the record.

[NOTE.—The descriptive brochure—"A New Future Is Waiting for You at Palm Coast"—is in the subcommittee files. The letter from which Congressman Reuss quoted above follows:]

PalmCoast®

ITT Community Development Corporation
28 West Flagler Street
Miami, Florida 33130

Dear Friend,

When was the last time a large corporation invited you to dinner?

ITT Community Development Corporation, a subsidiary of International Telephone and Telegraph Corporation, cordially invites you and your spouse to attend a special preview dinner party.

We are inviting you because we want your opinion of an important project we are undertaking in Florida, America's fastest growing major State.

ITT Community Development Corporation plans to develop a very special piece of land on Florida's East Coast, and we have asked a select group of successful people, like yourself, to have dinner with us and share a special preview of our PALM COAST property.

As our dinner guests you will receive our land sales presentation and we will show you our new full color film entitled "Palm Coast"—A Better Place, A Better Life, A Better Way.

Naturally, there is no cost or obligation on your part, however, attendance at this dinner is limited by the size of the restaurant facilities and we urge you to return the enclosed reply card immediately, so we can guarantee your reservation.

You will enjoy, as our guests, special preview information that can help you improve your own future in many ways. We urge you to accept this special invitation, because at the very least you can say to your friends—"Guess who invited us to dinner last week."

Yours sincerely,

Norman Young

Dr. Norman Young
President

A statement and offering statement has been filed with the Department of State of the State of New York. The filing does not constitute approval of the sale or lease or offer for sale or lease by the Department of State or any officer thereof or that the Department of State has in any way passed upon the merits of such offering. A copy of the offering statement is available upon request from ITT Community Development Corporation. NYA72-1343.

Mr. REUSS. I now show you this document and ask you whether there is any clue, hint or suggestion in the document, or in its attachments, that ITT has been involved in the various matters of concern to the Corps of Engineers, the Florida Department of Pollution Control, the Department of Interior, the Environmental Protection Agency and the other agencies and which we just referred to in our colloquy.

Mr. BERNSTEIN. Absolutely none.

First of all, the definition of "a select group of people," we have found, is anyone who can get up a down payment on one of these developed lots. It's a rather unique definition.

Mr. FASCELL. The way things are going now, Mr. Bernstein, that's a pretty select group.

Mr. BERNSTEIN. You know, with some of the bait and switch advertising we see from these developers, you can buy some of these lots for $40. Of course, you'll find out it's on a 90 degree hill, and it's kind of hard to develop. But the drainage is very good.

[Laughter.]

Mr. BERNSTEIN. The only reference in here is to the septic tank requirements of the Florida Division of Health, and there is the point that this cannot be assured on all lots. It does refer to the offering statement for further details.

One of the things that we find is that this type of advertising sucks in so many people who buy on the basis of this and the sales pitch. They never look at the offering statement. They never read the limitations.

That is one of the reasons that our proposed regulations apply to the advertising. They provide that when we see all of these beautiful pictures in the advertising that if they are artists renditions, they be labeled so. If we're talking about pictures of other developments by the same developer, they be labeled so.

We are requiring listing on here the disclaimer about HUD not having reviewed the advertising. We are requiring full disclosure, in prominent type, that an offering statement is the only method by which this property can be sold legitimately.

This is some warning. It isn't enough, frankly. It is better than most. Very few developers will give you this hint in the advertising.

Tragically, we've had case after case where people have had the hint in the advertising, and had the specific warning on the property report right smack on the frong page. For example, the case in which the Corps of Engineers denied a dredging permit, and a man bought his lot expecting to put a boat on a canal, only to find that he had 6 inches of water.

We asked him if he had read the property report. He said he had not. We asked if he had read it since. He said he had. When asked if he had seen the warning, he said that he had, it was on the front page, and he would not have bought it if he had read it before the purchase.

Mr. REUSS. Mr. Bernstein, as one who helped write the law regarding fast-buck land sales, which you are now administering, I am concerned. We set up various remedies, as I recall; but I want to be refreshed because I have not reviewed this for a year or two.

Your remedies include rescission of land sales already made where they were in part induced by inadequate disclosure, and the requirement as incident to that rescission that the payments made by the purchaser be refunded.

Is that not so?

Mr. BERNSTEIN. There is a fine distinction here. There's an absolute right of rescission, and voidance of the contract, which is the sole option of the purchaser if the sale is made without the individual's having received a copy of that property report prior to the sale. If he does not get the property report at any time before he signs on the dotted line, he has an indefinite time and right to rescind.

That is the same as in the case of the offering statement. It's an absolute right to rescind for any reason at all.

Mr. REUSS. What if the offering statement fails to disclose matters which would cause a reasonably prudent purchaser, had he known then, to shy away?

Mr. BERNSTEIN. Then, under section 1410, he has a measure of damages. The measure of damages is the difference between a number of alternatives, but basically it is the difference between the resale value of the land—what he can get for the land, and what he paid for it, plus any improvements he put into it.

I would think that perhaps a good lawyer might make a case that there is no resale value for much of this land, since, in fact, you are competing with a developer's massive advertising campaign, and it's impossible to resell this land.

And, in effect, if there is a very significant violation of disclosure in terms of lack of full disclosure, it may approach the point of actually constituting the property report null and void. I can't say. That's before a court of law.

But basically there's the measure of damages in such a case, as opposed to a right of total rescission. However, in some cases, we have administratively compelled developers to offer rescission to the purchasers who have purchased under a misleading or an insufficient property report.

In that case, it is because we had enough on the developer in terms of misrepresentation, and felt that was the most equitable remedy we could find. And the developer was willing to pay that price.

In that sort of case, though, it may be questionable whether we have a legal right to compel absolute rescission.

Mr. REUSS. You might briefly run down the various legal rights and duties of HUD with respect to a land developer who fails to make full and fair disclosure. What can you do?

Mr. BERNSTEIN. We have a series of remedies, moving from administrative proceedings to court proceedings, to criminal proceedings, plus a series of remedies for the members of the public which they themselves must enforce.

At the administrative level, if we find less than full disclosure, if we find misrepresentation, if we find failure to reveal a pertinent fact, we can issue a notice of proceeding leading to suspension of the developer. He's entitled to 15 days to reply and request a hearing. He can get a hearing if he disputes us, or he can amend his property report to give full disclosure.

If he fails to amend, the matter goes to hearing, and we've had about six go to hearing. In all the other cases, we've gotten what we wanted, and we've suspended, I'd say, about 35 developers of the 200 against whom proceedings have been initiated, on grounds of lack of full disclosure after the sales have commenced, as opposed to failure to make technical amendments after registration.

We can then suspend the developer from all future sales; at which point, depending on the scope of the misrepresentation, we may or may not have a criminal action. We have gotten some indictments where we have had massive misrepresentations. We got one at Treasure Lake in Georgia, which reads like a litany of every sale abuse. It's a 22-count indictment against four corporations, and four corporate officers and about six salesmen, and you name it. In terms of bait and switch, using shills to sell, lack of disclosure in the proper way, every abuse was in there.

We can take criminal action if we have a case. We can dispense with both of those for the time being and move into court through the Justice Department for an injunction. That's complicated.

We've just gotten our first recent injunction in the last week, and we expect, with that precedent, we will be able to get more.

In addition, any purchaser who has been defrauded under the act has civil remedies which I referred to. Those remedies must be pursued by him. We have recovered about $1.2 million for purchasers by requiring the issuance of rescisson letters, in about 7,800 cases where there was no property report given at all.

There we said to the developer, either you send the letters offering rescission, or we'll subpena your records and we'll send the letter. And the developers sent the letters by certified mail. In these cases, there was about a 25-percent choice to rescind by purchasers totaling up to about $1.2 million.

That's the easy case. The difficult case is the case in which there is a misrepresentation, and, under the act, the individual is limited to his rights in law. We cannot represent him in court in those rights.

Mr. REUSS. I would have one final question, Mr. Bernstein, relating to the ITT Palm Coast matter we've been discussing. Under the law is HUD—your agency—able to take whatever action it thinks proper, irrespective of what the Florida Division of Land Sales decides to do or not to do?

Mr. BERNSTEIN. Yes; absolutely. We expect Florida to act, and probably if it doesn't, we'll act.

Mr. REUSS. No further questions.

Mr. FASCELL. Congressman Ryan?

Mr. RYAN. No questions.

Mr. FASCELL. What consideration would be given to a land developer if, in his offering statement, he provides a period of time for rescission without cause to any buyer?

Mr. BERNSTEIN. We think that's very desirable. California has a 14-day rescission requirement in its law, and we find it works very well. It has a twofold benefit: It enables the purchaser to sit down, take time and cool off; it gives the economic incentive to the developer to watch his salesmen. If he knows that when the buyer goes home, and he's been taken by high pressure, playing the husband off against the wife, and other gimmicks that are used, he'll cool off. He's going to change his mind, and he's going to lose the sale.

By that time, the salesman has gotten his commission and may have floated to another area. In such a case, the developer is going to be a lot more careful in policing those sales. We think that's very desirable.

One of the recommendations that we are very seriously considering making to Congress for this year's legislative package is for something like the 14-day absolute rescission period. And we think a lot of the more reputable developers would endorse that proposal.

Mr. FASCELL. Does the land developer in this *Palm Coast* case have a rescission period in his offering?

Mr. BERNSTEIN. I don't know. We could submit that for the record. It is unusual for developers——

Mr. FASCELL. Advertise?

Mr. BERNSTEIN. They'll say, in many cases, in out-of-State sales, if a person buys at a dinner in Washington or New York and buys Florida land and, if that person visits within 6 months and changes his mind, his money will be refunded. But the buyer has to visit to cash in on that rescission.

Mr. FASCELL. Do you think this is the kind of rescission offer that was made in this case?

Mr. BERNSTEIN. I don't know. We will check that out right now for you.

Mr. FASCELL. A 6-month rescission, even with a visit, is not bad; it's better than nothing.

Mr. BERNSTEIN. It's better than nothing. If you had been at some of our hearings, some of the very tragic cases were so incredible that very often the audience would laugh. We have cases in this type of situation where an individual would buy and the promise would be: "You have to pay your own transportation, go down and look. If you don't like it, we'll pay it back."

In some cases, they said, "You pay your own transportation, and get there, and we'll reimburse you." In some cases, they would even pay the transportation.

One of the most vivid cases concerned a man in Detroit who bought land, went down to see it within the 6-month period, and went to the subdivision. He was advised that he really couldn't see it because it wasn't platted yet. It was "over there," and he only could get there by four-wheel-drive vehicle.

And that guy went out and bought two more plots there. It's unbelievable.

Mr. FASCELL. He must like land you can't see.

Mr. BERNSTEIN. This was a man earning $10,000 a year, and on the basis of his purchase, it was calculated that he was paying over $6,000 a year in payments on land development.

Mr. FASCELL. Under the Federal law, there is no time limit with respect to the requirements of rescission if you find a violation.

Mr. BERNSTEIN. Only if we find the violation that no property report was given at all.

Mr. FASCELL. Then there is no time limit?

Mr. BERNSTEIN. Then there is no time limit.

Mr. FASCELL. The time limit would be under ordinary law?

Mr. BERNSTEIN. Exactly.

Mr. FASCELL. In terms of other violations?

Mr. BERNSTEIN. Yes.

Mr. FASCELL. There is no remedy in terms of rescission for a lesser violation except total nonreporting; is that correct? That's what I understand it to say.

Mr. BERNSTEIN. If there is less than full disclosure through the failure of giving a property report, I would think, in addition to the rescission, the individual would have the right to sue for damages.

Mr. FASCELL. I wasn't talking about damages. I was just talking about rescission of the contract.

Mr. BERNSTEIN. Forgive me. I missed your question.

Mr. FASCELL. I am trying to find out what the grounds are, under the Federal law, for a rescission of contract.

Mr. BERNSTEIN. If no property report is given prior to the signing of the contract.

Mr. FASCELL. That's the only ground?

Mr. BERNSTEIN. There is a related ground where the property report is given before the signing, but given less than 48 hours before the signing. Then the individual has an absolute rescission right, but only for an additional 48 hours. We introduced legislation last year to do two things:

One, to prohibit the waiver of that right, which developers get left and right by slipping it in among the papers. The purchaser signs it. He doesn't even know he's waiving that right.

Second, extending the 48-hour period to 72 hours. That passed the Senate in the housing bill. As you know, there wasn't a housing act last year, so it did not become law. We would like, we think this year, to ban definitely the waiver of that rescission right and to extend the 48-hour rescission right to 72 hours. However, we have not finalized our legislative package yet.

But in the interim, we provided in our proposed regulations that no longer can that rescission waiver—that is, a limited rescission—be among a bunch of papers. It has to be on a separate piece of paper, 8 x 10, and I believe 10-point type. So hopefully, the purchaser will know he is signing a waiver of his rescission rights.

Mr. FASCELL. That's nice, Mr. Bernstein. But we have tried that with all kinds of other things—installment sales, repair contracts. That simple requirement, it's my humble opinion, won't make a bit of difference.

It's a step in the right direction, but you could put a green border around it with yellow print, and it wouldn't make any difference. The waiver would still be signed along with everything else in the package.

Mr. BERNSTEIN. That's why we think it should be banned completely.

Mr. FASCELL. We'd like to get in the record whatever this particular development company has done in its offerings on the right of rescission to purchasers.

Mr. BERNSTEIN. This has the 6-month rescission in which, if the sale is made off site, and if within 6 months the purchaser visits the property, he can get a refund.

Mr. FASCELL. Do you know whether this developer has actually rescinded—refunded—in any cases?

Mr. BERNSTEIN. I don't know. I do know in one of our investigations we found that for one reason or another—and this was a large developer—over 50 percent of the contracts that were entered into were either defaulted on or rescinded.

So there is a tremendous amount of both rescission and default.

Mr. FASCELL. In this particular case?

Mr. BERNSTEIN. No; a different developer. We have not made this examination of this developer, and we have no idea how many rescissions there were.

[NOTE.—Correspondence with Mr. Bernstein is printed in appendix 6, pp. 1500–1503.]

Mr. FASCELL. Thank you very much, Mr. Bernstein and gentlemen.

Now our next panel: Our distinguished attorney general of the State of Florida, Hon. Robert L. Shevin; Mr. Peter Baljet, executive director of the Florida Department of Pollution Control, representing the Governor; Mr. Bob Routa, executive director, Board of Trustees of the Internal Improvement Trust Fund; Mr. Dale Walker, chief, environmental protection section, Florida Game and Fresh Water Fish Commission, and Mr. Nick Leischen, an administrative assistant to the secretary of state, Richard Stone.

I know our attorney general has a very tight schedule. We appreciate all you gentlemen coming from Tallahassee to be here today to review these very important matters with us.

We'd like to hear from our attorney general—of whom all Floridians are extremely proud—next. We're very pleased to have his testimony on these matters before us today.

Mr. Shevin.

STATEMENT OF ROBERT L. SHEVIN, ATTORNEY GENERAL, STATE OF FLORIDA

Mr. SHEVIN. Thank you, Mr. Chairman and members of the subcommittee. I'm very happy to be here to testify on Florida's environment, which is one of the major concerns of our office.

In your letter of April 20, you asked for comments on the Corps of Engineers activities in Florida, particularly as to whether Florida is carrying out the recommendations of the committee's report entitled "Increasing Protection for our Waters, Wetlands, and Shorelines: The Corps of Engineers." [H. Rept. 92–1323, Aug. 10, 1972.]

You also requested information concerning Federal enforcement of pollution control laws and regulations, particularly with regard to dredge and fill activities, including dead-end canal systems, marshlands, Federal parks, the Cross-Florida Barge Canal, and the proposed Dade County Jetport, the Big Cypress, the Kissimmee-Okeechobee Basin impact statements, and plans for oil development in coastal waters.

You next requested information on what actions have been taken in Florida to preserve air and water quality, and you requested recommendations.

I would like to begin with recommendations and then comment just briefly on some of the specific issues mentioned in your letter. It is amazing to me how little the U.S. Government has done to protect its proprietary interest in Florida, let alone the public interest.

The Federal Government owns millions of acres of land in Florida, in military bases and national forests and national parks. The United States has the right to protect its property in both State and Federal courts. A long line of cases has established this. [*Cotton* v. *U.S.*, 11 How. (U.S.) 229, 231 (1850); *Wyandotte* v. *U.S.*, 389 U.S. 191, 201 (1967); *U.S.* v. *Shanks*, 384 F. 2d 721, 723 (1967).]

And yet, when the Cape Sable Sea Sparrow—an endangered species—is being destroyed in the Big Cypress Swamp, the Federal Government has done nothing to protect that endangered species. While polluted waters detrimentally affect naval bases and other military installations, the Federal Government, as riparian landowner, does nothing.

The Federal Government, as riparian landowner, is entitled to the natural flow of water to its land. This, again, was established in a very early case. [*U.S.* v. *Rio Grande Irrigation Co.*, 174 U.S. 690, 703–704 (1899).] And yet, the Federal Government has taken no legal action against developers whose drainage projects have cut off the waterflow to the Everglades National Park.

In fact, rather than protecting its land and resources, the Federal Government right now is authorizing the use of the Ocala National Forest as a bombing target; the use of the Ocala National Forest for oil exploration; the use of the Osceola National Forest for phosphate strip mining—a proposed use which we sought to enjoin through litigation presently pending in the U.S. District Court for the District of Columbia styled *State of Florida ex rel. Robert L. Shevin, Attorney General* v. *Rogers C. B. Morton, et al.* I have attached a copy of the complaint to the statement that you have. The Government is also authorizing continued discharge of waste by military vessels into harbors.

Finally, the U.S. Senate is presently considering approval of a treaty which, in my opinion, would remove to a great extent the authority of the State of Florida to enforce its oilspill liability law, which just recently was affirmed by the U.S. Supreme Court.

In that ruling, the Court held that Florida did have jurisdiction in protecting its coastlines from the destruction wrought by massive oilspills; 15 other States joined us as amici in the case, and all of us would hate to see this protection taken away from us in the name of international relations.

[NOTE.—The decision referred to is *Askew et al.* v. *American Waterways Operators. Inc., et al.*, 411 U.S. 325; 5 ERC 1209 (Apr. 18, 1973).]

Mr. SHEVIN. In addition to the above-named or mentioned common law authority, which has gone unused, the U.S. Supreme Court has added a new legal weapon to the Federal Government's environmental protection arsenal. In *Illinois* v. *City of Milwaukee* [406 U.S. 91, Apr. 24, 1972], the Court found that there exists a Federal common law of public nuisance. The Justice Department has not, to my knowledge, sought to use this legal theory in Florida or anywhere in the South.

My recommendation, therefore, is that the Federal Government use its common law authority to protect Federal property and the public interest. Such action certainly will not infringe upon the State's programs or goals, but will assist us in improving our precious resources—our water.

To begin this goal, the U.S. Department of Justice must activate its rather lethargic pollution control section in the Land and Natural Resources Division, which I understand has engaged in very little litigation as plaintiff. Also to be kicked into action are the Departments of Defense, Interior, and Agriculture—all well known as immovable bureaucracies, with tendencies to avoid rocking the boat.

The Federal Government should protect the property and resources which it holds in trust for the people through positive action, including litigation where necessary.

To return to your specific questions, it is my observation that the Corps of Engineers is operating with somewhat of a split personality. It still appears to enjoy channelizing and straightening and deepening our waterways. [See George Laycock, "The Diligent Destroyers," Audubon-Ballentine, 1970.] On the other hand, the corps has worked closely with the various U.S. attorneys around the State to prosecute dredge and fill violators in landmark cases, not only in Florida but throughout the United States. But we've had several in Florida, and they are cited in my statement. [See: *Zabel* v. *Tabb*, 430 F. 2d 199 (1970); cert. den., 91 S.Ct. 873 (1971); *U.S.* v. *Moretti*, 331 F. Supp. 151 (D.C. Fla. 1971); *U.S.* v. *Florida Power and Light Co.*, 311 F. Supp. 1391 (D.C. Fla. 1970); *U.S.* v. *Underwood*, 4 E.R.C. 1305 (D.C. Fla. 1972).]

Our office has fine cooperation with the general counsel of the corps district in Jacksonville and his staff. Unfortunately, however, some of the old engineers have not faded away, and many field personnel and supervisors are far from enthusiastic about environmental protection.

I have seen very little effort to protect wetlands, although the corps' authority to do so has been established in at least one case—in the 1971 case of *United States* v. *Baker*. [2 Env. Rep. cases, 1849 (S.D. N.Y. 1971).]

To avoid State certification requirements under the Federal Water Pollution Control Act as amended by Public Law 92-500, the corps is now issuing what it calls Class C permits for certain dredge and fill projects without informing Florida's Department of Pollution Control.

In addition, despite the corps' own regulation prohibiting after-the-fact permits—unless they are for minor work innocently done [33 CFR ¶ 209.120(c)(1)(IV)]—I am informed that the corps is considering the granting of some after-the-fact permits to again avoid State certification requirements.

Finally, it is my understanding that there are still problems with direct referrals of dredge and fill cases, with either the corp's office in Washington, or the Department of Justice in Washington—creating an impassable barrier between corps district offices and U.S. attorneys.

At this point, I would like to commend the U.S. attorneys in Florida, and their assistants, who have been extremely cooperative with the State and very active in environmental protection. If given more discretion, they could play a much greater role.

Regarding the Cross-Florida Barge Canal: From the information available to me, I don't think the corps has given up its dream of completing the Cross-Florida Barge Canal. Every action taken to curtail construction has been met with great reluctance.

Regarding dead end canals: For some time the corps was divided within itself as to whether or not it had jurisdiction over dead end canal systems. At a meeting which I called to coordinate Federal and State environmental programs, a corps spokesman from Atlanta stated unequivocably that the corps has no such authority. Corps counsel from both Mobile and Jacksonville disagreed.

I had one of my attorneys request an opinion from Mr. Manning Seltzer, the corps' general counsel in Washington, on the matter.

Copies of the request and response are attached. The corps agreed it had jurisdiction. Since then, however, all too often the corps has decided not to exercise its jurisdiction due to alleged manpower shortages.

[The data referred to are printed on pp. 95–118.]

Mr. SHEVIN. With regard to the Dade County Jetport: At hearings in south Florida, I have supported the newly proposed site for the Dade County Jetport on the Broward County line. A copy of a letter summarizing my position is attached. I have no comment on Federal activity on this site acquisition.

With regard to Big Cypress: I have commented on problems in the Big Cypress Swamp as they pertain to the Everglades National Park, and a certain endangered species of wildlife. I would also like to strongly recommend Federal purchase of the swamp for the protection, not only of the park, but also for the protection of the extremely productive estuaries of southwest Florida, in which breed so many forms of fish life important to the diets of much of the Nation. I recommend to the Congress and the administration expedited action to acquire this unique, irreplacable part of our Nation.

With regard to coastal oil exploration: In discussing coastal oil exploration and drilling, I would like to tie in a related subject—environmental impact statements, prepared pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., Public Law 91–190.

The statements appear more and more to be mere rationalizations for carrying out the proposed activity rather than objective analyses which report findings detrimental to a project as well as those which are complimentary. With regard to offshore drilling, the most recent impact statement of this kind relating to oil and gas exploration off the shores of Louisiana spent many pages explaining the treasure of fish food productivity in the Gulf of Mexico estuaries and offshore areas. The report went on to explain how important this food source was to the entire United States, and then concluded, without much grace, that we need oil, and we're going to drill anyway.

I grow tired of impact statements which give perfunctory treatment to the environmental facts and expend great effort to negate those facts in order to support the proposed projects.

I think the oil industry and the Government have been derelict in not spending more money in the research and development of other energy sources, particularly solar energy. It is a shame that we must risk the beauty of our beaches and the productivity of our estuarine areas which may ultimately prove to be more important to the future of mankind than energy and power.

I flatly oppose any oil drilling in coastal waters which could affect our estuaries, and I shall oppose any offshore drilling that is not accompanied by infallable safeguards.

Actions taken to protect air and water: The State of Florida, especially the department of legal affairs, has been particularly active in litigation initiated for environmental protection. Actions taken by my office are brought under my common law and statutory authority to abate public nuisances and to protect the public in behalf of the State as parens patraie. A list of such cases is now pending, along with cases brought on behalf of the Florida Department of Pollution Control and the Trustees of the Internal Improvement Trust Fund, is attached.

To summarize, I think the Federal Government could take a much more active role in environmental protection without damaging the State's role. I primarily suggest use of common law authority to protect Federal public lands.

I recommend that the Corps of Engineers turn more of its manpower and other resources toward environmental protection and away from channelizing and straightening our waterways.

We are all painfully aware of the limitations of our natural resources. The Federal Government should seek to protect, not exploit, those natural resources left to us in Florida.

Thank you.

Mr. FASCELL. Thank you very much, Attorney General Shevin. As usual, you show continued independence, courage, and initiative. As a citizen of Florida, I can do nothing more but add my commendation for your leadership in this very important area.

Ever since I've known you, you've always called it like it is. You haven't stopped, and I hope you never will, because we need that kind of leadership in the kind of pressing problems that we have in this State. Sometimes it is very hard to weigh in the balance what you have to do. You just have to call it like you see it, and what you think is in the best interests of the people of Florida. And that, you have been doing. I commend you for an excellent statement.

Mr. Chairman?

Mr. REUSS. I just want to join with what you have said about Attorney General Shevin, Mr. Fascell. We could use you in Washington, sir. I think I will withhold my questions.

Mr. SHEVIN. Mr. Chairman, may I excuse myself? I did have some other commitments that I am running late for right now.

Mr. REUSS. I think any questions I might have will be asked of Mr. Baljet and other members of the panel.

Mr. FASCELL. Mr. Gude?

Mr. GUDE. I just want to thank the attorney general for a very forthright statement.

Mr. FASCELL. Mr. Ryan?

Mr. RYAN. We could even use you in California.

Mr. FASCELL. Attorney General Shevin, thank you very much.

Without objection, the appendixes to your statement will be made a part of the record.

[The data appended to Mr. Shevin's prepared statement follow:]

STATE OF FLORIDA, ex rel. ROBERT L. SHEVIN, Attorney General, The Capitol Tallahassee, Florida ~~32304~~,

Plaintiff,

vs.

ROGERS C. B. MORTON, Individually and as SECRETARY OF THE INTERIOR; DEPARTMENT OF THE INTERIOR; BURTON W. SILCOCK, Director, Bureau of Land Management; BUREAU OF LAND MANAGEMENT; CLIFFORD M. HARDIN, Individually and as SECRETARY OF AGRICULTURE; UNITED STATES DEPARTMENT OF AGRICULTURE; EDWARD P. CLIFF, Chief, United States Forest Service; T. A. SCHLAPFER, Regional Forester, Southeast Region, United States Forest Service; ROBERT ENTZMINGER, Forest Supervisor, National Forests in Florida, United States Forest Service; and UNITED STATES FOREST SERVICE,

Defendants.

CIVIL ACTION NO. 1496-71

DOCKETED
7-30-71
FLORIDA ATTORNEY GENERAL

COMPLAINT FOR INJUNCTION, MANDAMUS AND DECLARATORY JUDGMENT

Applicable Statutes, Jurisdiction and Description of the Parties

1. This is a civil suit seeking injunctive, mandatory and declaratory relief to restrain the Defendants from granting leases for the mining of phosphates in the Osceola National Forest, Florida, to restrain Defendants from authorizing phosphate mining in the Osceola National Forest, Florida, and to require them to carry out their statutory duties.

This action arises under:

(a) The National Environmental Policy Act of 1969, Public Law 91-190, 83 Stat. 852.

(b) Endangered Species Conservation Act of 1969, Public Law 89-669, 80 Stat. 926, amended by Public Law 91-135, §§ 12(a), (e) 83 Stat. 282, 283, 16 U.S.C., §§ 668aa - 668ee.

(c) The Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

(d) Mineral Lands Leasing Act, as amended, 30 U.S.C., §§ 81, 211.

(e) Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C., §§ 351, 352.

2. Plaintiff, State of Florida, as a sovereign State, brings this action in its own right to protect and preserve interests of the Sovereign, and as parens patriae, in behalf of the citizens and residents of the State of Florida, to protect and preserve the property and welfare of the people of the State of Florida, and the environment of the State of Florida.

3. Relator, ROBERT L. SHEVIN, as Attorney General of the State of Florida, and as the Chief Legal Officer of the State, is required to represent the State and the people of the State when their rights are affected, and to act as legal guardian of the people, under Article IV, Section 3(d), Florida Constitution, 1968 Revision, and the Common Law.

4. Plaintiff, in behalf of the State and the people of the State, has a vital interest in the protection of the natural environment and resources, including water and wildlife and fish, in the State of Florida.

5. The Osceola National Forest is located in Florida and is comprised primarily of acquired lands, but also contains public domain lands.

6. (a) On information and belief, Defendants ROGERS C. B. MORTON and BURTON W. SILCOCK, and the DEPARTMENT OF THE INTERIOR and the BUREAU OF LAND MANAGEMENT are authorized to dispose of deposits of phosphate on National Forest Land pursuant to the provisions of 30 U.S.C., § 181, whether the lands are considered "public domain lands" or "acquired lands." However, pursuant to the provisions of 30 U.S.C., § 211, the authority of said Defendants to lease phosphate deposits and lands containing phosphate deposits can only be exercised when in the Secretary's judgment "the public interest will be best served thereby."

(b) Further, pursuant to 30 U.S.C., § 352, phosphate deposits in acquired lands cannot be leased "except with the consent

of the head of the executive deaprtment, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered." In this case the executive department which administers the Osceola National Forest is the Department of Agriculture, and its National Forest Service.

(c) In addition, the authority of Defendants Morton and Silcock, the Bureau of Land Management and Department of the Interior to grant phosphate mining leases in the Osceola National Forest is further delimited by the National Environmental Protection Act and the Endangered Species Conservation Act of 1969, both supra. Accordingly, all defendants must comply with the provisions of the above-mentioned statutes with respect to the issuance of leases to mine phosphates in the Osceola National Forest.

7. On information and belief, the Defendants, Secretary Morton, Department of the Interior, Director Silcock, and the Bureau of Land Management, pursuant to 30 U.S.C., § 211(b) and § 352, and 43 C.F.R, §§ 3160-3166, have granted approximately 50 phosphate prospecting permits and are presently processing requests for mining leases. The major corporate applicants for mining leases are: (1) Kerr-McGee, Inc., (2) Monsanto, Inc., (3) American Metal Climax, Inc., (4) Global Exploration and Development Co., and (5) Pittsburg and Midway Mining Co. Defendants have as yet failed to comply with any of the above listed statutes and are, and have been, responsible for ultra vires actions, including the failure to perform duties owed to the people of the State of Florida, complained of herein. Relief is sought against the individual Defendant, Secretary Morton, the Department of the Interior, Director Silcock, and the Bureau of Land Management, to enjoin them from further illegal and ultra vires acts, and to compel them to fulfill their legal duties to Plaintiff.

Relief is sought against the individual defendants, Secretary Hardin and Forest Service Chief Cliff, Regional Forester Schlapfer, and Forest Supervisor Entzminger, and the Forest Service and Department of Agriculture to perform their advisory duties and exercise their veto powers, and to compel them to otherwise fulfill their legal duties to Plaintiff.

8. This Court has jurisdiction over this action under 5 U.S.C., §§ 701-706; 28 U.S.C., § 1331(a); 28 U.S.C., § 1361 (Mandamus); and 28 U.S.C., §§ 2201 and 2202 (Declaratory Judgments).

9. The amount in controversy, exclusive of interest and costs, exceeds $10,000.

General Allegations

Upon information and belief:

10. Defendants, through their officers and employees, particularly the Bureau of Land Management, are currently processing lease applications which would authorize the lease holders to mine phosphates from beneath the surface of the Osceola National Forest.

11. The effects of phosphate mining are commonly known to be ecologically damaging.

12. Phosphate mining in the Osceola National Forest could possibly destroy the fresh water aquifer, destroy the natural quality and beauty of the Suwannee River, and destroy other natural resources of the State of Florida, including fish and wildlife.

13. The following endangered species of wildlife are known to exist in the Osceola National Forest: Southern Bald Eagle, Red Cockaded Woodpecker, Sandhill Crane and American Alligator.

14. The effect of phosphate mining in the Osceola National Forest, due to the nature of the operations, would threaten the existence of the above-named endangered species.

Plaintiff's First Claim for Relief

As its first claim for relief against Defendants, Plaintiff alleges that:

15. (a) The Defendants, as officers and agencies of the Federal Government, are required under Section 102(1) of the National Environmental Policy Act of 1969, supra (hereinafter referred to as NEPA), to interpret and administer all relevant policies, regulations and public laws, including those pertaining to the programs and policies of the Departments of Interior and Agriculture and the Bureau of Land Management and the Forest Service, in accordance with the policies of NEPA to the fullest extent possible.

(b) The policies of NEPA include the provision, at Section 101(a), that it is "the continuing policy of the Federal Government, in cooperation with State * * * governments, * * * to use all practical means and measures * * * to create and maintain conditions under which man and nature can exist in harmony, and fulfill the social, economic and other requirements of present and future generations of Americans." (Emphasis supplied.) Accord, Executive Order 11514, March 4, 1970, 35 Fed.Reg. 4247.

(c) In order to carry out the provisions of NEPA, Section 101(b) provides:

> * * * it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--
> (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
> (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
> (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
> * * * (Emphasis supplied.)

16. The mining for phosphates on the Osceola National Forest will inevitably cause serious, permanent and irreparable damage to local and regional natural resources, especially including damage to fresh water resources, fish and wildlife. There are no essential considerations of national policy connected with the proposed phosphate mining leases inconsistent with the objectives,

policies and mandates of NEPA referred to in paragraph 15 of this Complaint that would justify Defendants' failure to comply therewith. Defendants' continuation of their processing of phosphate mining lease applications and the granting of those leases will constitute a violation of these objectives, policies and mandates of NEPA.

17. In processing the applications for leases the Defendants have failed to comply with the mandates of both Sections 101 and 102 of NEPA and of Executive Order 11514, supra. Section 102(a) provides that federal agencies shall:

> (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;
>
> (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
>
> Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, * * * (Emphasis supplied.)

18. Mining for phosphate in the Osceola National Forest will: (a) pollute the fresh water aquifer in the area; (b) pollute rivers and streams in the area; (c) destroy fish and wildlife habitats; and (d) destroy public outdoor recreation lands, and dispersed recreation opportunities. This threatened destruction would be irreparable, and is unnecessary.

19. Defendants, in processing requests for phosphate mining leases without complying with the above-mentioned provisions of NEPA, have acted, and continue to act, beyond the limits of their statutory authority, in violation of Plaintiff's rights under NEPA, since Plaintiff is unable to adequately protect itself until Defendants comply with their statutory mandates. This continued illegal action will cause Plaintiff to suffer serious, permanent and irreparable harm unless Defendants are restrained.

20. Plaintiffs have no plain and adequate remedy at law.

Plaintiff's Second Claim for Relief

As its second claim for relief against Defendants, Plaintiff alleges upon information and belief that:

21. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, with the same effect as though herein fully set forth and repeated.

22. Because of the environmental damage which would result from the granting of phosphate mining leases in the Osceola National Forest, Defendants, pursuant to 16 U.S.C., § 668aa(b), must seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, and, insofar as is practical and consistent with the primary purposes of Defendants, preserve the habitats of such threatened species on lands under their jurisdiction. Such protective and preservative activities of Defendants must be carried out, to the maximum extent practicable, in cooperation with the State of Florida, pursuant to 16 U.S.C., § 668cc(a).

23. To date Defendants have failed to carry out the mandates of 16 U.S.C., § 668aa(b) and § 668cc(a), and therefore have not, and are not, complying with statutory mandates, with the resultant violation of Plaintiff's rights, resulting in serious and irreparable harm for which it has no adequate remedy at law.

Plaintiff's Third Claim for Relief

As its third claim for relief against Defendants, Plaintiff alleges that:

24. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, with the same effect as though herein fully set forth and repeated.

25. The granting of phosphate mining leases by Defendants will necessarily result in phosphate mining in the Osceola National Forest, the result of which will be to deprive the State of Florida and the people of the State of Florida of their property, without due process of law, in violation of the provisions of the Fifth Amendment to the United States Constitution. This deprivation will necessarily result due to the inevitable destruction by phosphate mining operations of fresh water supplies, river and stream quality and character, and fish and wildlife. These conditions would also deprive the Sovereign State of Florida, and the people of the State of Florida of their right to a clean, healthful, liveable environment, a fundamental right reserved to them under the Ninth and Tenth Amendments to the United States Constitution. The violation of Plaintiff's Constitutional rights as herein alleged would cause irreparable injury to Plaintiff, for which it has no adequate remedy at law.

Plaintiff's Fourth Claim for Relief

As its fourth claim for relief against Defendants, Plaintiff alleges that:

26. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, with the same effect as though herein fully set forth and repeated.

27. Defendant Morton cannot determine whether or not the "public interest will best be served" by the granting of the phosphate mining leases in question, pursuant to 30 U.S.C., § 211(a), until he has complied with the statutes discussed above. Until Defendant Morton complies with the statutory provisions detailed in this Complaint, he is in violation of 30 U.S.C., § 211, by authorizing the processing and granting of phosphate mining leases in the Osceola National Forest. Since the granting of mining leases will result in mining, this violation will inevitably result in irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law. Just as the State of Florida has the duty to protect the public interest of its citizens, so does Defendant Morton owe the State of Florida and its people the duty to protect their interests.

Plaintiff's Fifth Claim for Relief

As its fifth claim for relief against Defendants, Plaintiff alleges that:

28. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, with the same effect as though herein fully set forth and repeated.

29. Pursuant to 30 U.S.C., § 352, no lease to mine mineral deposits located on or under acquired lands can be issued without approval of the executive department or instrumentality having jurisdiction over the lands. For phosphate mining leases, this means approval of Secretary Hardin and the Department of Agriculture, and the National Forest Service and its officers, Messrs. Cliff, Schlapfer and Entzminger. To date no approvals for the leasing of phosphate mining have been given by these Defendants for the Osceola National Forest. Such approval cannot be given without adequate ecological studies and compliance with the statutes cited in this Complaint.

Any such approval would, therefore, be contrary to law, and would cause irreparable injury to Plaintiff, for which it has no adequate remedy at law.

WHEREFORE, Plaintiff prays for an Order:

1. Enjoining Defendants from proceeding further with the processing of requests for leases for the mining of phosphates in the Osceola National Forest.

2. Enjoining Defendants from granting or approving phosphate mining leases in the Osceola National Forest.

3. Declaring and ordering that Defendants, under the laws, statutes, constitutional provisions and executive orders referred to in this Complaint, must undertake thorough ecological and economic studies of the effect of phosphate mining in the Osceola National Forest upon the natural resources of Florida and the United States.

4. Ordering Defendants to provide the State of Florida with copies of the required environmental impact statements so that the State can make recommendations prior to final action on the proposed phosphate mining leases.

5. Granting to Plaintiff the cost and disbursements of this action.

6. Granting to Plaintiff such other and further relief as this Court may deem just and proper.

ROBERT L. SHEVIN
Attorney General

Herbert T. Schwartz

HERBERT T. SCHWARTZ
Deputy Attorney General

DANIEL S. DEARING
Chief Trial Counsel

Kenneth F. Hoffman

KENNETH F. HOFFMAN
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Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304
Attorneys for Plaintiff

May 12, 1972

Mr. E. Manning Soltzer
General Counsel
United States Department of the Army
Corps of Engineers
Washington, D. C.

Dear Mr. Seltzer:

At a meeting held in Tallahassee on May 4, 1972, attended by all Federal and State agencies which enforce environmental laws in Florida, certain comments made by a Corps of Engineers official drew considerable comment and criticism from other parties attending the meeting.

The meeting, called to help coordinate environmental protection enforcement, was attended by members of the various state agencies and by the United States Army Corps of Engineers, the United States Attorneys from all three Florida Districts, the United States Bureau of Sport Fisheries and Wildlife, a representative of Secretary Morton of the Department of the Interior, the United States Coast Guard, and the Environmental Protection Agency.

At the meeting, Mr. W. L. Black of the United States Corps of Engineers, Atlanta Office, made a startling statement. He said that the Corps of Engineers could not take jurisdiction over dredge and fill or Refuse Act violations which occurred within private canal systems. He said that according to a case which had in its title the words "Bay of Jamaica," the Corps of Engineers' policy was that the only interest the Corps had was in the physical connection to natural navigable bodies of water, and that if a canal already existed which was connected to a natural navigable body of water, connection to the existing canal of hundreds of miles of other canals would not be within the jurisdiction of the Corps of Engineers.

If that is indeed the policy of the Army Corps of Engineers, it certainly is a policy, and not a legal requirement, and, if it is the policy of the Corps of Engineers, it is disastrous for Florida.

The State of Florida relies heavily upon the Corps of Engineers to take jurisdiction over private canal systems because evidence has been compiled which shows that canal systems built by developers almost without exception become sources of pollution. Pursuant to Section 21(b) of the Water Quality Act of 1970, the State must certify that projects requiring federal permits will not degrade water quality. Should the Corps not even consider giving permits in this particular area, the state would have lost one of its most effective tools for preventing pollution sources.

Certainly, the Corps of Engineers has jurisdiction over artificial canals, whether they connect directly to a naturally navigable body of water, or whether they connect via other artificial canals.

In 1871, the United States Supreme Court, in Steamer Daniel Ball, 10 Wall. 557 (77 U.S.), laid down the "navigability in fact" test for determining navigability. In 1874, the court expanded the navigability theory in Steamer Montello, 20 Wall. 430, 22 L.Ed.391, in which the court found the capability of use by the public for purposes of transportation and commerce affords the true criteria of the navigability of a river, rather than the extent and manner of that use. The Court held that if a river was capable in its natural state of being used for purposes of commerce, it is navigable in fact. In 1884, the Supreme Court decided Ex Parte Boyer, 109 U. S. 629, in which the Court held that artificial canals which form means of communication between different states, came within federal jurisdiction. That case is noteworthy, because the canal involved was but six feet deep.

In 1903 the court decided the Robert W. Parsons, 191 U.S. 17, in which the question was whether the federal government had jurisdiction over an artificial canal wholly within the boundaries of one state. The court stated: "We fail to see, however, that this creates any distinction in principle."

In United States v. Appalachian Electric Power Company, 311 U. S. 377 (1940), the court held that a body of water is navigable if it can be made navigable through future reasonable improvements. In Oklahoma vs. Atkinson Co., 313 U.S. 508 (1941), the Supreme Court broadened the concept of navigability to include the nonnavigable upper reaches of an entire watershed.

See also United States v. Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, et al., 312 U. S. 592 (1941), and Iowa-Wisconsin Bridge Company vs. United States, 84 F.Supp. 852, 114 Ct.Cl. 464, cert. den. 339 U.S. 92.

As can be seen from these cases, the test of navigability certainly is not limited to natural bodies of water, and includes as its basis

theories of commerce, navigational servitude, and dominant easement. Certainly, when a canal system is developed, which is navigable in fact, any connection to that canal system by any other canal system would be within the jurisdiction of the Federal Government, and of the United States Army Corps of Engineers.

It is important to Florida to know what the policy of the Army Corps of Engineers is on this matter. Your prompt response to this inquiry would be greatly appreciated.

Sincerely,

KENNETH F. HOFFMAN
Assistant Attorney General
Administrator, Environmental
Law Section

KFH/blg

cc: Mr. Kent Frizzell
Assistant Attorney General
Land & Natural Resources Division
U. S. Dept. of Justice
Washington, D. C.

Mr. Martin Green, Chief
Pollution Control Section
Land & Natural Resources Division
U. S. Dept. of Justice
Washington D. C.

Mr. Walter Keichel
Deputy Assistant Attorney General
Land & Natural Resources Division
U. S. Department of Justice
Washington, D. C.

Honorable Robert L. Shevin
Attorney General of Florida
The Capitol
Tallahassee, Fla.

Hon. Joel Kuperberg, Executive Director
Florida Board of Trustees of the
Internal Improvement Trust Fund
Elliot Building
Tallahassee, Fla.

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

IN REPLY REFER TO
DAEN-GCZ-C

20 JUN 1972

Mr. Kenneth F. Hoffman
Assistant Attorney General
Department of Legal Affairs
Tallahassee, Fla.

Dear Mr. Hoffman:

I wish to thank you for your inquiry and comments regarding the jurisdiction of the Corps of Engineers over artificial canals. It is a question in which we apparently share a deep interest and common theories of law.

It is my position that artificial canals are clearly subject to the regulatory authority exercised by the Corps of Engineers, either when the canals constitute navigable waters of the United States, or when, through connections, the canals affect the course, condition, or capacity of the navigable waters. In the latter situation, however, the scope of authorities is limited to those of Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). We are, of course, aware of the several cases you cited; indeed, we recently completed a thoroughgoing study of the subject in order to clearly establish the extent of our jurisdiction.

The increased environmental concerns of recent years have often resulted in understandable confusion among our field offices regarding some of the more complex questions on the policies and legal authorities under which we operate. However, internal regulations which describe the extent of our jurisdiction, and the policies and procedures which govern its exercise, will be distributed to our field offices in the near future.

Although I believe that Federal jurisdiction clearly exists in the majority of the canal cases, the primary impact of private canal developments is usually on the lands involved. In carrying out our regulatory activities, we will therefore rely heavily on state actions and positions in that sphere. The Corps of Engineers is committed to the protection, maintenance, and improvement of the navigable waters of the United States and the wise use of our resources and environment. We will continue to cooperate with the State of Florida to achieve those ends.

Sincerely,

E. MANNING SEITZER
General Counsel

ROBERT L. SHEVIN
ATTORNEY GENERAL

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLA.

JAN 10 1973

Greater Miami Chamber of Commerce
Post Office Box 4219
Miami, Fla.

Attention: Mrs. Long

Dear Chamber Members:

On the evening of December 11, 1972, a hearing was held at the North Miami Beach City Hall concerning a proposed Dade County Jetport to be located at the Broward County line. The Chief of my Environmental Law Section, Mr. Kenneth Hoffman, made a brief statement in behalf of my office concerning the proposed site of the new jetport. This letter is to briefly summarize my viewpoint as expressed by Mr. Hoffman at that meeting.

Of all the sites evaluated by the Dade County Port Authority, the United States Department of Transportation, and various other State and federal agencies, Site No. 14 appears to be the least objectionable. A thorough review of the preliminary environmental impact statement prepared by the Dade County Port Authority concerning selection of Site No. 14 does indicate a certain lack of specificity concerning control of problems resulting from the creation of a large jetport.

What must be made certain before construction should ever begin is that the airport will not generate a new system of freeways, creating a neon jungle and additional crowding and pollution problems. There must be a certainty that a mass transportation system will be used to transport people to and from the airport and major population centers. There must also be a certainty that the creation of a jetport will not create a population boom in an area already facing a water supply shortage.

With the advent of new exhaust and noise control devices, the people of Dade County need not necessarily be overly concerned with the environmental problems from the operation of the airport itself. The real problems to be considered are the problems of transportation and overdevelopment surrounding the airport, and the taxation of the already depleted natural resources in the area. If the county, State and federal governments will have the courage to zone properly and pass proper laws for protection of the area, then, and only then, will the site selection prove beneficial.

Sincerely,

ROBERT L. SHEVIN
Attorney General

STATUS REPORT OF CASES IN LITIGATION

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
State of Florida Department of Agriculture & Consumer Services, etc. v. David H. Levin, et al. Circuit Court, Leon County	(Mirex case) - Injunction & declaratory decree	Ferguson	Trial to be set for sometime in February, 1973. Continuing Discovery Procedures
State ex rel. vs. Bakers Service Co. & Chemical Terminal & Storage Co. Circuit Court, Leon County	Suit for injunctive relief (Oil Storage Tanks - Public nuisance)	Brindell	New Case - Complaint filed 11/30/72.
Joseph V. Barg, et al. vs. Sarasota County, et al. Circuit Court, Sarasota County	Suit for declaratory judgment, seeking a determination that a state construction zoning statute is invalid	Hoffman	Motion for Change of Venue granted 2/14/72. Motion to Dismiss denied 5/1/72. Plaintiffs not pressing case.
In Re: Petition of Barron Drainage District Circuit Court, Hendry County	Intervention - Objections to protect the State's natural resources	Hoffman	Motion to Intervene and Motion to Dismiss filed 10/14/72.
State Department of Air and Water Pollution Control vs. John D. Bower & Foundation Insurance Agency, Inc. Circuit Court, Franklin County	Suit for Injunction, penalties and damages in excess of $5,000	Bottcher	Held in abeyance at request of Office of Enforcement pending approval of pollution abatement proposal
State, etc. vs. Cities Service Oil Company Circuit Court, Polk County	Phosphate slime spill - Peace River	Brindell	Decision of trial court appealed to 2nd District Court of Appeal

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
State, etc. vs. Cities Service Oil Company 2nd D.C.A.	Appeal from Circuit Court, Polk County	Brindell	Appeal dismissed, remanded to Trial Court; final damage reports being prepared; discovery continuing
Joseph A. Costantino, et al. vs Broward County Health Dept., et al. Circuit Court, Broward County	Motion to Show Cause & for Contempt - Violation of Order denying septic tank permits	Hoffman	Hearing held 12/11/72 in Circuit Court. Motion to Abate denied. Case continued since Broward Co. Pollution Department apparently wishes to grant all permits.
State Dept. of Pollution Control vs. County Commissioners of DeSoto County, Florida Circuit Court, DeSoto County	Injunction - Violation of Orders	Bottcher	Dismissed with approval of Board - to be closed
State of Florida, etc. v. Emerald Lake Development & Construction Co. Circuit Court, Osceola County	Illegal Canal Digging	Brindell	Settlement Negotiations being conducted
Hamilton Forman & Austin Forman vs. City of Pompano Beach, et al. Circuit Court, Broward County	Pollution of inland waters & of the beaches	Brindell	No action by Plaintiffs since last general election Answer filed
Earl Gorman, etc., et al. vs. Air and Water Pollution Control Dept. Circuit Court, Orange County	Alternative Writ of Mandamus Mandatory hook-up of sewage collection & treatment facilities to City of Apopka	Ferguson	Joint stipulation filed 6/1/71; Order of Modification entered 6/25/71; Facility to be completed by 12/18/72. Case held open pending completion of facility

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
Florida Board of Trustees, et al. vs. J. Erwin Groover, et al. Circuit Court, Monroe County	Protect Big Cypress Swamp	Hoffman	Held pending decision of Supreme Court - Preparation for trial now being made
Florida Board of Trustees, et al. vs. J. Erwin Groover, et al. 3rd D.C.A.	Appeal from decision of trial court	Hoffman	Lower Court decision affirmed; Defendant filed Petition for Certiorari in Supreme Court
Farm & Leisure Estates, etc. et al. vs. Board of Trustees, et al. Supreme Court of Florida	Appeal from 3rd D.C.A.	Hoffman	Certiorari denied; Remanded to lower court for trial
Hargraves, et al. v. Costin, et al. Intervenor, Attorney General Circuit Court, Gulf County	Intervened to protect State's interest in beach area	Ferguson	Court has stayed case pending disposition of rehearing in Tona-Rama, the space needle case in Daytona Beach
Jacksonville Electric Authority vs. Pollution Control Board 1st DCA	Petition for Writ of Certiorari	Bottcher	DCA decision reverses Board Department ordered to issue permit.
Dept. of Pollution Control & Attorney General vs. Jamestown-Beachview, Inc. Circuit Court, Lee County	Inducing salt water into fresh water by constructing canals, etc.	Brindell	Settled per Stipulation of parties
Attorney General, et al. v. J.C. Properties, Inc., et al. Circuit Court, Dade County	Disposition of unregistered land	Ferguson	Amended Complaint filed 11/21/72; Continuing discovery

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
J. C. Properties, Inc., et al. vs. Robert L. Shevin, et al. 3rd D.C.A.	Appeal from ruling of trial court	Ferguson	Appeal Dismissed. Department was ordered to issue certification on prior opinion involving Trustees
J. C. Properties, Inc., et al. vs. Robert L. Shevin, et al. Supreme Court	Petition for Writ of Certiorari	Ferguson	Petition denied; remanded to trial court
In Re: LaBelle Water Control District Circuit Court, Glades County	Drainage District, Intervention to require compliance with environmental statutes	Hoffman	Court ordered stay pending receipt of all environmental permits
Noah McKinnon, et al. vs. Atlantis Water Management District 1st DCA	Amicus Curiae pursuant to Rule 3.7K, Florida Appellate Rules	Brindell	Motion to file Amicus Brief denied by 1st DCA 12/4/72 Quo warranto being developed
Cliff Miller, Inc. vs. Richard F. Wells Circuit Court, Monroe County	Writ of Mandamus	Brindell	Dismissed by Defendant - to be closed.
State ex rel. Shevin vs. Rogers C. B. Morton, et al. U. S. District Court, District of Columbia	Complaint for injunction to restrain Defendant from granting leases for phosphate mining in Osceola National Forest	Hoffman	Motion for Preliminary Injunction filed 7/30/71; Awaiting environ-impact statement before returning to court for full trial
State ex rel. Shevin v. Harrington D Parker & John J. Sirica U. S. District Court of Appeals for District of Columbia	Petition for Writ of Mandamus	Hoffman	Petition filed 12/15/72

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
Florida Department of Pollution Control v. New Florida, Inc. Circuit Court, Clay County and (COMBINED CASES) State ex rel. Shevin v. New Florida, Inc. Circuit Court, Clay County	Water Pollution suit for injunction Contempt of court Public Nuisance - Odor - Complaint for Injunctive Relief	Ferguson Hoffman	Plant closed by court order Defendants now seeking to reopen the plant. Defendant fined for contempt.
City of North Miami Beach, Fla. vs. State of Florida Air & Water Pollution Control Board, etc. 1st DCA	Petition for Writ of Certiorari	Brindell	In abeyance pending Plaintiff's attempted resolution at Dade County level
P. C. Utilities Corp. v. Dept. of Air and Water Pollution Control Circuit Court, Palm Beach County	Petition for Writ of Mandamus DPC to issue construction permit	Hoffman	Court decision for DPC following trial. Plaintiff appealed to 4th D.C.A.
P. C. Utilities Corp, et al. vs. Dept. of Air & Water Pollution Control, et al. 4th D.C.A.	Appeal from decision of Trial Court	Hoffman	Appeal Dismissed by Appellant
P. C. Utilities Corp., etc., et al. vs. Division of Health of Dept. of Health & Rehabilitative Services, et al. U. S. District Court, Southern District, Miami Division	Damage suit for $20,000,000,000 under civil rights statutes for failure to grant sewage treatment plant construction permit	Hoffman	Our Motion to Dismiss granted Appeal filed in Fifth Circuit Court of Appeals

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
P. C. Utilities Corp., etc, et al. vs. Division of Health of Dept. of Health & Rehabilitative Services, et al. U. S. Court of Appeals, Fifth Circuit	Appeal	Hoffman	Awaiting hearing
State ex rel. Shevin vs. Florida Portland Cement Company, et al. Circuit Court, Hillsborough County	Complaint for Temporary and permanent injunctive relief - cement dust, etc.	Hoffman/ Bottcher	Consent order entered into with Portland Cement after 2/3 trial. Cement company to meet 1975 standards by mid-1973. Dismissal of Tampa Electric Co. appealed to the Second District Court of Appeal.
State ex rel. Shevin vs. Florida Portland Cement Company, et al. 2nd D.C.A.	Appeal	Hoffman/ Bottcher	Hearing set for January, 1973.
State & Air & Water Pollution Control Commission vs. St. Regis Paper Company Circuit Court, Duval County oil spill	Damages and penalties	Ferguson	Dismissed for failure to hold prior administrative hearing. (damages) Denied motion to dismiss by St. Regis. (penalties)
State & Air & Water Pollution Control Commission vs. St. Regis Paper Company 1st D.C.A.	Appeal	Ferguson	Reversed, dismissed complaint for failure to hold prior administrative hearing. Oral argument held, awaiting opinion.

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
State & Air & Water Pollution Control Commission vs. St. Regis Paper Company Supreme Court	Appeal	Ferguson	Affirmed. Department now commenced administrative proceeding for penalties.
In Re: South County Drainage District Circuit Court, Volusia County	Validity of Section 1409 (abolishing So. County Drainage District)	Ferguson	Dismissed petition and abolished Drainage District Appealed to 1st D.C.A.
In Re: South County Drainage District 1st D.C.A.	protect the State's natural resources	Ferguson	Appeal pending. Department is not party to the appeal because issue involves existence of district, not environmental issues of drainage plan.
In Re: Petition of Seminole Forest Water Management District Circuit Court, Volusia County	protect the State's natural resources	Ferguson	Circuit Court dismissed Union Camp's petition for failure to comply with Chapter 298, F.S.
City of Panama City vs. City of Springfield, etc. Circuit Court, Bay County	Sewage Service Rate dispute	Brindell	Answer filed.
State of Florida & Dept. of Air and Water Pollution Control vs. Sugar Rose Canning Company, et al. Circuit Court, Hillsborough Co.	fish kill - Lake Thonotosassa, civil penalties and damages in excess of $12,000.00	Hoffman/ Dunn	Hearing on Motions set for January 8, 1973.

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
Game $ Fish Commission vs. Donald Tysinger Circuit Court, Glades Co.	Injunction to prevent escaped non-native fish into Florida waters.	Hoffman	After hearing, defendant agreed in open court to comply with Game Comm. rules and regulations.
United Farmworkers of Florida, etc. et al. vs. City of Delray Beach, et al. U. S. Dist. Court, Southern District	Declaratory & injunctive relief for failing to provide sewage and water services; action under Federal Civil Rights Statute.	Hoffman	Following a consolidated trial for preliminary and permanent relief, judgement for DPC and other Defendants. Copy of order attached.
Dept. of Natural Resources et al., v. Virginia Kay, Inc. Circuit Court, Broward Co.	Public nuisance in form of purpresture - complaint for injunctive relief	Dunn	Being closed - case dismissed for compliance.
In Re: Petition of West Broward Water Control District Circuit Court, Broward County	Intervention - objections to drainage district - to protect State's natural resources - motion to dismiss	Dunn	Intervention granted and petition dismissed 12/8/72.
Westwood Lake, Inc. vs. Nathaniel P. Reed, et al. Circuit Court, Leon County	Injunction and declaratory decree whether Ch. 403, F.S. or Ch. 24, MetroCode of Dade County has jurisdiction	Brindell	pending.
State of Florida Dept. of Pollution Control vs. John C. Youngblood Circuit Court, Polk County	Civil action for preliminary and permanent injunction	Bottcher	Final Judgment entered. Case held open pending compliance with Court order.

STYLE OF CASE & COURT	TYPE OF CASE	RESPONSIBLE ATTORNEY	STATUS
Phillip P. Zipes vs. Harold Holland, et al. Circuit Court, Dade County	Injunction prohibiting construction of a building	Dunn	Filed Motion to Dismiss on November 7, 1972.
State of Fla. ex rel. Robert L. Shevin, et al. vs.Dixie Concrete, Inc., Circuit Court, Brevard Co.	Public Nuisance Temporary and permanent injunction	Hoffman	New Case - Hearing set for May 11, 1973
Pat Imperato vs. L. G. Kerner, et al., Circuit Ct., Pinellas Co.	Injunctive relief & damages	Hoffman	Pending hearing on Motion to Dismiss
Ocean Hotels, Inc. vs. State of Florida Department of Natural Resources, Circuit Ct., Palm Beach Co.	Temporary injunction and Court review of administrative order	Hoffman	Trial set for June 5-7, 1973
Fla. Board of Trustees of the Internal Improvement Trust Fund vs. Ocean Hotels, Inc. (same court)	Public nuisance complaint for injunctive relief	Hoffman	Trial set for June 5-7, 1973
State of Florida, ex rel. Robert L. Shevin, et al. vs. Pal-Mar Water Conservation District, et al. Circuit Court, Martin County	Public Nuisance Complaint for temporary and permanent injunction	Hoffman	New case - Awaiting answers to Complaint
United Farmworkers of Florida, etc., et al. vs. City of Delray Beach, et al. U. S. Court of Appeals - 5th Circuit	Appeal from U. S. District Court, Southern District	Hoffman	Briefs submitting - awaiting setting of hearing

Mr. FASCELL. With your continued cooperation, we may be back to you to ask you some more questions for the record, which will be held open for 3 weeks.

Mr. SHEVIN. We're very happy to have you in Florida.

Mr. FASCELL. Thank you.

Mr. Baljet?

STATEMENT OF PETER P. BALJET, EXECUTIVE DIRECTOR, STATE OF FLORIDA DEPARTMENT OF POLLUTION CONTROL

Mr. BALJET. Mr. Chairman and distinguished members of the subcommittee, my name is Peter P. Baljet, and I am executive director of the Florida Department of Pollution Control.

On behalf of Governor Askew, I would like to welcome you to Florida, and thank you for this opportunity to meet with you today concerning one of the most crucial problems we face—control of pollution and conservation of our natural resources.

In Florida, we are blessed with more than our share of environmental assets, and so it is fair to say, I think, that we are as vitally concerned about environmental control as any State in the Nation.

And under Governor Askew's leadership, we have been very active in areas such as protection of air and water quality, land use planning, and preservation of our environmentally unique areas for this and future generations.

Today I would like to report on some matters which Chairman Reuss has indicated are of especial concern to this subcommittee. Separately, I have submitted a complete report to your staff, and I would like to briefly discuss with you some matters which the report covers in greater detail.

The Florida Department of Pollution Control, of which I am privileged to serve as executive director, was created by the Florida Legislature in 1969. In essence, the department has as its mission the control and abatement of air, water, noise, and solid waste pollution. In 1969, the department was assigned 25 full-time employees.

By contrast, we have 334 full-time personnel assigned to pollution control duties today, with a total departmental budget of some $5.4 million. This expansion accurately reflects, I think, the high priority all our citizens put on control of air and water pollution.

The department of pollution control is assigned to the Governor, who appoints the five-man pollution control board, which has policy-making responsibility in pollution control matters.

Florida's most critical pollution problem, as far as we care concerned at this time, is water pollution from inadequately-treated sewage. With some 1,200 miles of coastline in Florida, we feel a special and very deep responsibility to protect our water resources.

You may be, to some extent, already familiar with the sewage-connection "moratorium" adopted by the pollution control board last fall. This action was our response to a bad situation which was not showing signs of very much improvement.

Many communities did not meet the deadline in our State law for secondary sewage treatment of January 1, 1973. Those communities which did not meet the standard were ordered to make no new connections to their sewerage systems. Exemptions to the sewage connection ban have been allowed, however, in communities making a maximum effort to upgrade their sewage treatment facilities.

We feel this action has accomplished a great deal in moving this deplorable situation off dead center, and without the substantial economic dislocation that some opponents of the action had predicted.

Certainly one of the major problems facing local officials in their efforts to upgrade sewage treatment facilities is that of obtaining the huge sums of money required to plan and actually construct modern, sophisticated treatment plants. It is fair to say, I think, that Florida can use every dollar authorized for Federal grants under the 1972 Amendments to the Federal Water Pollution Control Act, and we are hopeful that all the funds can soon be released.

In addition, we have two State programs for providing loans to local governments at very low interest rates, and we are also providing technical assistance to local governments who apply for Federal and State funds.

In air pollution, Florida's blueprint for clean air is our State air implementation plan, prepared pursuant to the Federal Clean Air Act. We are at present conducting extensive hearings in Florida on compliance schedules for air pollution sources, to meet the stringent emission and air quality standard by the July 1, 1975, deadline set in our air implementation plan.

Solid waste is emerging as a priority problem in Florida. Open dumps, all too common in the past, must be phased out and replaced by well-run, efficient sanitary landfills or recycling programs. We have proposed an ambitious program for solid waste control to our State legislature, which is now under consideration in the present legislative session.

Our efforts to control air and water pollution, as well as our attempts to comply with the various requirements of the Federal air and water pollution control laws, are seriously hampered by the decrease in financial support of our program by the Federal Government.

Federal pollution control laws have considerably expanded the amount of State effort required in air and water pollution control. But at present there appears to be little or no additional financial assistance forthcoming from the Federal Government. In some areas, Federal support will actually decrease.

In fiscal year 1973, the department of pollution control is operating on a budget of some $5.4 million, of which approximately 21 percent comes from Federal grants, with the remainder from State funds. In contrast, Governor Askew has recommended to the State legislature an appropriation for the department in fiscal year 1974 of approximately $8.8 million, of which only 13 percent is anticipated to come from Federal program grant funds.

It is estimated that for the department of pollution control to administer at the State level the national pollutant discharge elimination system, provided for in the 1972 Federal Water Pollution Control Act Amendments, will cost at least $1 million. There is no indication that additional program grant funds will be provided for this purpose by EPA, if Florida is approved to handle the Federal permit system.

EPA funding of the Florida air program for fiscal year 1973 was on the order of $700,000. We have learned that Federal support of our air pollution control program is to decrease to some $450,000.

This decrease will seriously retard our program. Discontinuation of the EPA manpower assistance program will also hamper our efforts

to comply with our air pollution control goals. While we will keep on our State payroll those employees who have been on the program, the fact that EPA will not provide manpower assistance free to the State will be a step backward.

In solid waste, we have learned that EPA will staff at the level of only two solid waste positions per region for the 1974 fiscal year. This drastic curtailment in Federal effort will have a serious and detrimental effect on progress currently being made toward upgrading of solid waste practices in Florida. The elimination of EPA solid waste planning grants will be similarly harmful to our program.

Finally, I would just like to touch again on the sewage problems which will not be solved in Florida if the moneys appropriated by Congress for that purpose are not released. Right now, we have approximately $220 million in requests for Federal grant funds for badly needed upgrading of sewage facilities, and if the Office of Management and Budget succeeds in efforts to impound funds, only $72 million will come to Florida toward that huge amount of requested funds. Only a few of the many requests will be met.

At this time, Mr. Chairman, I would like to turn for the final few minutes of my testimony to several specific matters you inquired about in your letter, including administration of Federal grant funds for construction of water pollution control facilities, as well as finger-fill canals, compliance with recommendations of the EPA-Dade County enforcement conference, vessel pollution, and ocean outfalls.

As I mentioned earlier, Florida's communities urgently need all the Federal construction grant funds authorized under the Federal Water Pollution Control Act Amendments of 1972. However, it has been demonstrated by a number of sources, including an audit by the U.S. General Accounting Office, that administration of the grants has, to a great extent, slowed down the flow of those funds which have been available. Many local governments have, in the past, found themselves ensnarled in redtape at the State and Federal Government levels, with projects hopelessly delayed because of paperwork passing back and forth between the levels of government.

To attack this problem, Governor Askew asked the Florida Legislature to authorize a new role for the department of pollution control, and the legislature responded. Now, the department has a staff of technical assistance personnel, who are thoroughly familiar with pollution control and with the mechanics of the Federal grant system. They are assigned to work with local governments, helping them apply for grant funds, and following their applications through to fruition.

Where Federal funds are not available, the technical assistance personnel attempt to arrange for funding from one of the State loan programs, where possible.

We feel this new mission of our department will aid local governments in their crucial efforts to receive funds for construction of waste treatment facilities.

The problem of artificial canals has been very serious and difficult of solution in Florida, where nearly everyone wishes to live on the waterfront.

It has been demonstrated that the construction of extensive labyrinth canal systems adjacent and connecting to natural bodies of water will result in adverse effects on the natural body of water.

In practice, canal systems have been found to act as a repository for storm water runoff, including associated organic debris, nutrients, pesticides, oils, greases, and coliform bacteria. When directed into a canal system, these materials will either be flushed out into the natural waters, or if flushing is poor, they will accumulate in the canal waters.

When canals are dredged to depths that preclude sunlight penetration, they generally have dissolved oxygen levels below those minimums specified in Florida's water quality standards.

In addition, canals may cause depletion of fresh water resources, because of increased runoff and direct ground water drainage into the canals. A loss of fresh water is generally replaced by salt water, and would be expected to infiltrate the ground water during dry seasons.

The department of pollution control has responsibility for certifying proposed dredge-fill projects to the U.S. Corps of Engineers for their effect on water quality. The department has, in connection with the Florida Trustees of the Internal Improvement Fund—which issues State permits for dredge-fill projects—very critically reviewed all recent applications and refused certification and permits to projects which would create more dead end canals with stagnant, polluted waters. We are also monitoring existing canals to accumulate further information on their effects.

Governor Askew has requested that the 1973 session of the Florida Legislature enact legislation which would strictly regulate coastal dredging and filling, and protect our precious estuarine areas. In addition, the pollution control board has under consideration an administrative rule which would place technically sound controls on dredging and filling projects.

At this point, I would like to depart from the prepared statement to focus in on our problems with the Corps of Engineers. Section 401 of Public Law 92–500 requires that "any applicant for a Federal license or permit to conduct any activity * * * shall provide the licensing or permitting agency a certification from the State" for any such discharge "will comply with the applicable provisions."

Attached is a list of 334 applicants for a corps permit since January 11, 1973, 12 of which were seen and only eight of which cleared the Florida Department of Pollution Control. Most of these projects are of a minor nature, and were handled as exemptions to the certification process, and would hurdle without any trouble.

However, several—12 to be exact—appear to be of a type which should have had review from a water quality standpoint prior to issuance of a permit. This is a substantial number to occur in 4 months—an average of 3 a month.

The data are submitted, in view of the wording of section 401 of Public Law 92–500, and the fact that the U.S. Army Corps of Engineers is too broadly interpreting the so-called exemption for minor activities.

The Florida Department of Pollution Control should demand that all applications should come through the State department. Our personnel will decide whether or not a project should be examined in relationship to its effect on water quality.

Section 401 of Public Law 92–500 also provides that: "No license or permit shall be granted until the certification required by this section

has been obtained or has been waived as provided in the preceding sentence." This section also has been violated several times by the Corps of Engineers.

One example of this is a letter of certification issued on May 9, 1973, by the Florida Department of Pollution Control while the permit was issued by the corps on April 20, 1973—in effect, with no certification from the Florida Department of Pollution Control.

And these documents are attached.

On May 30, 1973, Mr. Jim Brindell, administrator, environmental law section, spoke by phone and brought a letter to Mr. Bernie Goode of the Jacksonville office of the corps, asking him to refrain from issuing permits until the certification was actually received from the Florida Department of Pollution Control. This is also attached.

Consideration of this letter was given as evidenced by the fact that on May 8, 1973, corps permit No. 72–1300 was issued, even though the Florida Department of Pollution Control had not issued a certification, has not of this date, and will not until certain deficiencies are met.

Another problem that has developed with the corps is their refusal to strictly enforce the terms of the permit actually issued to dredge and fill. An example of this is the Mackle development on Marco Island where more canals were dredged than were permitted. The proposed corps' solution is an after-the-fact permit, again without contacting the Florida Department of Pollution Control for certification as required under Public Law 92–500.

Still another problem that has been experienced on numerous occasions is the refusal of the corps to comply with the Florida department water quality standards contained in 17–3, Florida Administrative Code. An example of this is the dredging project in Pensacola Bay of March of this year where Florida standards were violated for weeks despite the protest of the Florida Department of Pollution Control.

All the way up this chain of command, the department is presently bringing suit to resolve this problem. A copy of the complaint is attached.

Another example of this occurred on the Caloosahatchee River last year, where again the Florida Department of Pollution Control strenuously objected to the violation of our waterfall standards without any correction of the problem.

Going back to the statement, Mr. Chairman——

Mr. FASCELL. Let me say, at this point, that all the attachments to that particular statement dealing with the Corps of Engineers will be included in the record and also all the attachments to your principal statement to which you're now referring will be made part of the record.

Mr. BALJET. Previously this morning I think Mr. Morrissey elaborated on the Dade County progress to comply with the Federal enforcement dictates, and I can skip that in my presentation. He has also addressed himself to pollution from vessels. That will parallel our statement.

Mr. FASCELL. The full text of your statement will be made a part of the record, Mr. Baljet.

[Mr. Baljet's report to the subcommittee is printed in app. 10, pp. 2305–2440 of these hearings. His prepared statement and the data relating to the Army Corps of Engineers follow:]

PREPARED STATEMENT OF PETER P. BALJET, EXECUTIVE DIRECTOR, FLORIDA DEPARTMENT OF POLLUTION CONTROL

Mr. Chairman and distinguished members of the subcommittee, my name is Peter P. Baljet, and I am executive director of the Florida Department of Pollution Control.

On behalf of Governor Askew, I would like to welcome you to Florida, and thank you for this opportunity to meet with you today concerning one of the most crucial problems we face—control of pollution, and conservation of our natural resources.

In Florida, we are blessed with more than our share of environmental assets, and so it is fair to say, I think, that we are as vitally concerned about environmental control as any State in the Nation.

And under Governor Askew's leadership, we have been very active in areas such as protection of air and water quality, conservation of our precious water resources, land use planning, and preservation of our environmentally-unique areas for this and future generations.

Today I would like to report on some matters which Chairman Reuss has indicated are of especial concern to this subcommittee. Separately, I have submitted a complete report to your staff, and I would like to briefly discuss with you some matters which the report covers in greater detail.

The Florida Department of Pollution Control, of which I am privileged to serve as Executive Director, was created by the Florida Legislature in 1969. In essence, the Department has as its mission the control and abatement of air, water, noise, and solid waste pollution. In 1969 the Department was assigned 25 full-time employees. By contrast, we have 334 full-time personnel assigned to pollution control duties today, with a total departmental budget of some $5.4 million. This expansion accurately reflects, I think, the high priority all our citizens put on control of air and water pollution.

The Department of Pollution Control is assigned to the Governor, who appoints the five-man Pollution Control Board, which has policy-making responsibility in pollution control matters.

Florida's most critical pollution problem, as far as we are concerned at this time, is water pollution from inadequately-treated sewage. With some 1,200 miles of coastline in Florida, we feel a special and very deep responsibility to to protect our water resources.

You may be, to some extent, already familiar with the sewage-connection "moratorium" adopted by the Pollution Control Board last fall. This action was our response to a bad situation which was not showing signs of very much improvement. Many communities did not meet the deadline in our State law for secondary sewage treatment of January 1, 1973. Those communities which did not meet the standard were ordered to make no new connections to their sewage systems. Exemptions to the sewage connection ban have been allowed, however, in communities making a maximum effort to upgrade their sewage treatment facilities. We feel this action has accomplished a great deal in moving this deplorable situation off dead center, and without the substantial economic dislocation that some opponents of the action had predicted.

Certainly one of the major problems facing local officials in their efforts to upgrade sewage treatment facilities is that of obtaining the huge sums of money required to plan and actually construct modern, sophisticated treatment plants. It is fair to say, I think, that Florida can use every dollar authorized for Federal grants under the 1972 Amendments to the Federal Water Pollution Control Act, and we are hopeful that all the funds can soon be released. In addition, we have two State programs for providing loans to local governments at very low interest rates, and we are also providing technical assistance to local governments who apply for Federal and State funds.

In air pollution, Florida's "blueprint for clean air" is our State "Air Implementation Plan," prepared pursuant to the Federal Clean Air Act. We are at present conducting extensive hearings in Florida on compliance schedules for air pollution sources, to meet the stringent emission and air quality standards by the July 1, 1975, deadline set in our air implementation plan.

Solid waste is emerging as a priority problem in Florida. Open dumps, all too common in the past, must be phased out and replaced by well-run, efficient sanitary landfills or recycling programs. We have proposed an ambitious program for solid waste control to our State legislature, which is now under consideration in the present legislative session.

Our efforts to control air and water pollution, as well as our attempts to comply with the various requirements of the Federal air and water pollution control laws, are seriously hampered by the decrease in financial support of our program by the Federal Government. Federal pollution control laws have considerably expanded the amount of State effort required in air and water pollution control, but there at present appears to be little or no additional financial assistance forthcoming from the Federal Government. In some areas, Federal support will actually decrease.

In fiscal year 1973, the Department of Pollution Control is operating on a budget of some $5.4 million, of which approximately 21 percent comes from Federal grants, with the remainder from State funds. In contrast, Governor Askew has recommended to the State legislature an appropriation for the department in fiscal year 1974 of approximately $8.8 million, of which only 13 percent is anticipated to come from Federal program grant funds.

It is estimated that for the Department of Pollution Control to administer at the State level the national pollutant discharge elimination system, provided for in the 1972 Water Pollution Control Act Amendments, will cost at least $1 million. There is no indication that additional program grant funds will be provided for this purpose by EPA, if Florida is approved to handle the Federal permit system.

EPA funding of the Florida air program for fiscal year 1973 was on the order of $700,000. We have learned that Federal support of our air pollution control program is to decrease to some $450,000. This decrease will seriously retard our program. Discontinuation of the EPA manpower assistance program will also hamper our efforts to comply with our air pollution control goals. While we will keep on our State payroll those employees which have been on the program, the fact that EPA will not provide manpower assistance "free" to the State will be a step backward.

In solid waste, we have learned that EPA will staff at the level of only 2 solid waste positions per region for the 1974 fiscal year. This drastic curtailment in Federal effort will have a serious and detrimental effect on progress currently being made toward upgrading of solid waste practices in Florida. The elimination of EPA solid waste planning grants will be similarly harmful to our program.

Finally, I would just like to touch again on the sewage problems which will not be solved in Florida if the moneys appropriated by Congress for that purpose are not released. Right now, we have approximately $220 million in requests for Federal grant funds for badly-needed upgrading of sewage facilities, and if the Office of Management and Budget succeeds in efforts to impound funds, only $72 million will come to Florida toward that huge amount of requested funds. Only a few of the many requests will be met.

At this time, Mr. Chairman, I would like to turn for the final few minutes of my testimony to several specific matters you inquired about in your letter, including administration of Federal grant funds for construction of water pollution control facilities, as well as finger-fill canals, compliance with recommendations of the EPA Dade County Enforcement Conference, vessel pollution, and ocean outfalls.

As I mentioned earlier, Florida's communities urgently need all the Federal construction grant funds authorized under the Water Pollution Control Act Amendments of 1972. However, it has been demonstrated by a number of sources, including an audit by the U.S. General Accounting Office, that administration of the grants has, to a great extent, slowed down the flow of those funds which have been available. Many local governments have, in the past, found themselves ensnarled in red tape at the State and Federal Government levels, with projects hopelessly delayed because of paperwork passing back and forth between the levels of government. To attack this problem, Governor Askew asked the Florida legislature to authorize a new role for the Department of Pollution Control, and the legislature responded. Now the department has a staff of technical assistance personnel, who are thoroughly familiar with pollution control, and with the mechanics of the Federal grant system. They are assigned to work with local governments, helping them apply for grant funds, and following their applications through to fruition. Where Federal funds are not available, the technical assistance personnel attempt to arrange for funding from one of the State loan programs, where possible.

We feel this new mission of our department will aid local governments in their crucial efforts to receive funds for construction of waste treatment facilities.

The problem of artificial canals has been very serious and difficult of solution in Florida, where nearly everyone wishes to live on the waterfront.

It has been demonstrated that the construction of extensive labyrinth canal systems adjacent and connecting to natural bodies of water will result in adverse effects on the natural body of water. In practice, canal systems have been found to act as a respoitory for storm water run-off, including associated organic debris, nutrients, pesticides, oils, greases, and coliform bacteria. When directed into a canal system these materials will either be flushed out into the natural waters, or if flushing is poor, they will accumulate in the canal waters. When canals are dredged to depths that preclude sunlight penetration, they generally have dissolved oxygen levels below those minimums specified in Florida's water quality standards.

In addition, canals may cause depletion of fresh water resources, because of increased run-off and direct groundwater drainage into the canals. A loss of fresh water is generally replaced by salt water, and would be expected to infiltrate the groundwater during dry seasons.

The Department of Pollution Control has responsibility for certifying proposed dredge-fill projects to the U.S. Corps of Engineers for their affect on water quality. The department has, in connection with the Florida Trustees of the Internal Improvement Fund, which issues State permits for dredge-fill projects, very critically reviewed all recent applications and refused certification and permits to projects which would create more dead-end canals with stagnant, polluted waters. We are also monitoring existing canals to accumulate further information on their effects. Governor Askew has requested that the 1973 session of the Florida legislature enact legislation which would strictly regulate coastal dredging and filling, and protect our precious estuarine areas. In addition, the Pollution Control Board has under consideration an administrative rule which would place technically-sound controls on dredging and filling projects.

Dade County has taken a number of actions to comply with recommendations of the Federal-State Enforcement Conference for Dade County. Included among these is the development and submittal, by June 1973, of a master plan for pollution abatement, including a timetable for construction with priority of projects and financial plans covering needs projected to the year 2000. Projects are planned and underway for secondary treatment of sewage discharged to the ocean through ocean outfalls; also, restriction and elimination of septic tanks in metropolitan Dade County; inventorying all waste sources in the county; restrictions on discharges to inland waterways; and, prohibition of use of shipboard toilet facilities in the City of Miami marina. With the completion of the master water quality management plan for Dade County and its approval by the Florida Department of Pollution Control and EPA, the county will have an active and functional program to meet the enforcement conference recommendations.

With regard to pollution from vessels, Florida has taken the position that Public Law 91–224 mandates Federal action, upon which State actions will hinge. However, the department has, through its certification of dredge and fill projects, required that developers of marinas provide pumpout facilities. Several individual counties, as indicated previously concerning Dade County, have developed local regulations. The department intends to support the EPA regulation requiring holding tanks.

There are 11 ocean outfalls in Southeast Florida. They vary in degree of treatment from none, to secondary treatment. Under State law, they are required to provide secondary treatment. The outfalls, with an average daily flow of some 124 million gallons are highly controversial. They must be eventually eliminated; however, we find no alternative to their use on an interim basis, and are concentrating our efforts on getting each upgraded to the point that they provide secondary treatment. Various research projects are now underway to find alternatives to the outfalls, and to find ways to conserve the large quantities of fresh water we are losing through them to the ocean.

As I indicated at the beginning of my presentation, Florida has bountiful natural resources to protect and enhance. We feel Florida's programs in protection of the environment have really begun to move. However, we have much yet to do, and we cannot afford to falter. Too much is at stake.

Again, we sincerely appreciate the opportunity to testify here today. Governor Askew has asked me to make myself and any of our staff available to you to assist in your efforts any way we can.

Thank you for your kind attention.

STATE OF FLORIDA
DEPARTMENT OF
POLLUTION CONTROL
INTEROFFICE COMMUNICATION

TO: Peter P. Baljet

FROM: Environmental Law Section

DATE: May 23, 1973

RE: Problems with the U. S. Army Corps of Engineers

1) Section 401 of PL 92-500 requires that any applicant for a Federal license or permit to conduct any activity . . . shall provide the licensing or permitting agency . . . a certification from the State that any such discharge will comply with applicable provisions . . .

Attached is a list of three hundred and thirty-four (334) applicants for a Corps permit since January 11, 1973, twelve of which were seen and only eight of which cleared the Florida Department of Pollution Control. Most of these projects are of a minor nature, were handled as exemptions to the certification process, and would have cleared the certification hurdle without any trouble; however several (twelve to be exact) appear to be of a type which should have had review from a water quality standpoint prior to issuance of a permit. This is a substantial number to occur in four months, an average of three a month.

It is submitted that in view of the wording of Section 401, PL 92-500, and the fact that the U. S. Army Corps of Engineers is too broadly interpreting this so-called exemption for minor activities, that the Florida Department of Pollution Control should demand that all applications come through this Department and that our personnel decide whether or not a project should be examined as to its effect on water quality.

2) Section 401 of PL 92-500 also provides that, "No license or permit shall be granted until the certification required by this section has been obtained or waived as provided in the preceeding sentence", (this refers to the one year time limit on state action).

This section also has been violated several times by the Corps. One example of this is a letter of certification issued on May 9, 1973, by the Florida Department of Pollution Control, while the permit was issued by the Corps on

April 20, 1973, in effect with no certification from the Florida Department of Pollution Control(both attached). On May 3, 1973, Jim Brindell, Administrator, Environmental Law Section, spoke by phone and wrote a letter to Mr. Bernie Goode of the Jacksonville Office of the Corps asking him to refrain from issuing permits until a certification was actually received from the Florida Department of Pollution Control (attached). The consideration this letter was given is evidenced by the fact that on May 8, 1973, Corps permit #72-1300 was issued even though the Florida Department of Pollution Control had not issued a certification, has not at this date, and will not until certain revisions are made. (It is interesting to note that the applicant is a Vice President of ITT Development Corp.)

3) Another problem which has developed with the Corps is their refusal to strictly enforce the terms of the permits actually issued to dredge and fill. An example of this is the Mackle Development on Marco Island where more canals were dug than were permitted. The Corps' proposed solution is an after-the-fact permit (again without contacting the Florida Department of Pollution Control for certification as required under PL 92-500).

4) Still another problem which has been experienced on numerous occasions is the refusal of the Corps to comply with the Florida water quality standards contained in Chapter 17-3, Florida Administrative Code. An example of this is the dredging project in Pensacola Bay in March of this year where Florida turbidity standards were violated for weeks in spite of the protests of the Florida Department of Pollution Control all the way up the chain of command. The Department is presently bringing suit as a result of this problem (copy of complaint attached). Another example of this occurred on the Caloosahatchee River last year, where again the Florida Department of Pollution Control strenuously objected to the violation of our water quality standards without any correction of the problem.

I recommend that all four problems be brought to the attention of the Congressional Committee conducting hearings on these types of problems in Miami on May 25 and 26, 1973.

TC/lb

Attachments

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
2562 EXECUTIVE CENTER CIRCLE, EAST
MONTGOMERY BUILDING, TALLAHASSEE, FLORIDA 32301

PETER P. BALJET
EXECUTIVE DIRECTOR

DAVID H. LEVIN
CHAIRMAN

May 9, 1973

Charlotte County
Dredge and Fill Certification
08-31-0087
DF-08-597

Mr. Fred Vidzes
General Development Corp.
1111 South Bayshore Drive
Miami, Florida 33131

Subject: State Certification in accordance with Section 401 (a) (1), Public Law 92-500, Federal Water Pollution Control Act (1972 Amendments)

Gentlemen:

Pursuant to Public Law 92-500, this will certify that the following project will comply with the applicable water quality standards of the State of Florida, which standards have been approved by the Administrator of the Environmental Protection Agency and have been adopted as the effluent limitations under Section 301 (b), Public Law 92-500, Federal Water Pollution Control Act.

The issuance of this certification is based upon a review of the details of the project and a public notice of this agency's intent to certify the same.

The applicant is cautioned that during the execution and/or maintenance of the subject project, creation of turbidity in the excess of fifty (50) Jackson Units)measured in accordance with Department Technical Memorandum 4-4) above the background level and/or directly or indirectly affecting the water quality in the aforementioned waterway in such a manner as to exceed the limitation on the concentrations of various constituents for such waters as prescribed in Chapter 17-3, Florida Administrative Code, is a violation of the Water Quality Standards of the State of Florida.

This certification is issued on the basis that the water quality will not be degraded. Degradation may be allowed where degradation will not reduce water quality below the existing water classification for the area and the project has been deemed by the Department of Pollution Control to:

1. not be detrimental to the best interests of the state, and

2. is necessary to the state's social and economic development.

At the time of the issuance of this certification, there are no Federal limitations or other limitations under Sections 302, 306 and 307 of the Federal Water Pollution Control Act (Public Law 92-500).

Monitoring Required by the Applicant

Turbidity	Frequency
	Prior to dredging and during dredging and filling
Dissolved oxygen, temperature, pH, and coliform bacteria, using standard methods	Monthly

Effluent Limitations

As specified in Chapter 17-3, Florida Administrative Code, Paragraph 17-3.09 Criteria: Class III Waters - Recreation - Propagation and Management of Fish and Wildlife, and Paragraph 17-3.05, Water Quality Standards; Specifics.

Turbidity shall not exceed fifty (50) Jackson Turbidity Units as related to standard candle turbidimeter above background within one hundred (100) feet of the cutter head or spoil area overflow structures.

Vessels moored in the basin will not be permitted to discharge any wastes into the waters. The basin is to be used for mooring purposes only.

Description of Project

Perform dredging and filling at Grassy Point to restore tidal creek and construct boat basin, dredge in West Spring Lake for additional fill for Grassy Point area, construct boat ramp, Peace River and Alligator Bay, Charlotte County, Florida as shown on the attached map.

The applicant is hereby required to notify the Department of Pollution Control Regional Office of the schedule of the project before beginning any work covered by this certification. All testing data shall be submitted to the Department of Pollution Control's Regional Office.

Sincerely,

Office of the Executive Director
Dredge and Fill Section

B. A. Barnes, P.E.

BAB/mk
Attachment

cc: Corps of Engineers
Board of Trustees
Southwest Region
EPA
Dept. of Interior

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

THE FLORIDA DEPARTMENT OF POLLUTION CONTROL, an agency of the State of Florida,

Plaintiff,

vs.

THE UNITED STATES ARMY CORPS OF ENGINEERS, an agency of the United States Government; STANDARD DREDGING CORPORATION; COL. HENRY A. GRIFFITH as District Engineer, U. S. Army Corps of Engineers, Mobile, Alabama,

Defendants.

C O M P L A I N T

The Florida Department of Pollution Control, an agency of the State of Florida, sues the Defendants and alleges:

JURISDICTION

1. This is a civil action under the laws of the United States wherein the amount in controversy exceeds the sum of $10,000, exclusive of interests and costs.

2. This Court has original jurisdiction of the action pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1391 (b).

3. This is an action in the nature of a mandamus to compel officers and employees of the United States, and agencies thereof to perform duties owed to the Plaintiff.

4. This Court has original jurisdiction of this action pursuant to 28 U.S.C. 1361.

PARTIES

5. Plaintiff, Florida Department of Pollution Control, created by Florida Statute Section 20.26 and Florida Statute Section 403.045, is charged by Florida Statute Section 403 with the statutory duty and authority to prohibit pollution of the waters of the State of Florida.

6. Plaintiff, Florida Department of Pollution Control is authorized by Florida Statute Section 403.121 (1) (a) and (b) to institute a civil action to recover damages and civil penalties for any injury to the air, waters, or property, including animal, plant and aquatic life, of the State of Florida caused by any violation of Florida Statute 403.161.

7. Plaintiff, Florida Department of Pollution Control, is authorized pursuant to Section 403.131, Florida Statutes to seek injunctive relief to enforce compliance with applicable water quality standards, and to prevent irreparable injury to waters of the state and plant, animal and aquatic life.

8. Defendant, United States Army Corps of Engineers, has responsibility for construction, operation, maintenance and real estate necessary for improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection pursuant to Rivers and Harbors Act of 1899, Title 33, U.S.C. Sections 401, 403, 404, 406 - 417; Fish and Wildlife Coordination Act of 1958, Title 16, U.S.C. Section 742, et. seq.; Federal Water Pollution Control Act, Title 33, U.S.C. Section 1141, et. seq.; National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321 - 4347.

9. Defendant, Standard Dredging Corporation, incorporated under the law of the State of New Jersey, is authorized

to do business in the State of Florida. Defendant Standard Dredging Corporation is in the business of dredging and was under contract to the U. S. Army Corps of Engineers to conduct a maintenance dredging project in Pensacola Bay, Florida in March and April of 1973.

10. Defendant, Col. Henry A. Griffith as District Engineer for the United States Army Corps of Engineers at Mobile, Alabama, has the duty to approve and supervise all maintenance operations necessary for improvement of rivers, harbors and waterways. Rivers and Harbors Act of 1899, Title 33, U.S.C. Sections 401, 403, 404, 406 - 417. Fish and Wildlife Coordination Act of 1958, Title 16 U.S.C. Section 742, et. seq. Federal Water Pollution Control Act, Title 33, U.S.C. 1141, et. seq. National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321 - 4347.

GENERAL ALLEGATIONS

11. This is an action for injunctive relief and to recover civil penalties and damages for unlawful pollution of waters of the State of Florida.

12. This action is brought pursuant to Section 313 of the Federal Water Pollution Control Act, PL 92-500, 86 Statute 875 and Florida Statute Chapter 403, to recover damages and civil penalties for the Defendants' violation of Florida and Federal law relating to water pollution, and for an injunction to compel compliance with water quality standards and to prevent irreparable damage to waters of the State of Florida and of the United States.

13. Defendant, Standard Dredging Corporation, under

the direction, supervision and control of Defendant, United States Army Corps of Engineers conducted a dredging operation in Pensacola Bay which resulted in violation of state and federal water quality standards.

14. This is an action to compel Defendants U. S. Army Corps of Engineers and Col. Henry A. Griffith as District Engineer to fully perform their statutory duty to protect and enhance the quality of the waters of the United States in accordance with the Federal Water Pollution Control Act, PL 92-500, 33 U.S.C. 1151, et. seq.

SPECIFIC ALLEGATIONS

15. During March and April, 1973, the Defendant, United States Army Corp. of Engineers under the supervision and direction of Defendant Col. Henry A. Griffith in concernt with Defendant Standard Dredging Corporation conducted in the waters of Pensacola, Bay, Escambia County, Florida a dredging and digging operation for the purpose of removing and relocating bottom settlements.

16. The waters of Pensacola Bay are in accordance with the Federal Water Pollution Control Act, PL 92-500, waters of the United States and pursuant to Section 403.031 (3) and 403.062, Florida Statutes, are under the jurisdiction, control and supervision of Plaintiff, State of Florida Department of Pollution Control.

17. Water quality standards established by Florida are contained in the document Rules of the Florida Air and Water Pollution Control Commission, Pollution of Waters, Chapter 28-5, Florida Administrative Code, now amended as Rules of the Depart-

ment of Pollution Control and renumbered as Chapter 17-3, Florida Administrative Code. A certified copy of Chapter 17-3, Florida Administrative Code, is attached as Exhibit 1 and by reference incorporated into this Complaint.

18. The waters of Pensacola Bay have been classified as Class III waters by Department Rule 17-3.09 and 17-3.21, Florida Administrative Code.

19. The Florida Water Quality Standards have been approved and adopted by the federal government in 40 C.F.R. 120.10.

20. The aforesaid dredging activities occurred in the waters of Pensacola Bay in Longitude 87°, 12 minutes, 48 seconds West and Latitude 29°, 22 minutes, 42 seconds North.

21. Aforesaid dredging created in the waters of Pensacola Bay turbidity in access of 50 Jackson units above background level, specifically on March 14, 1973 the turbidity was determined at 1045 Jackson units above background level.

22. Rule 17-3.05 (2) (b), Florida Administrative Code, is a water quality standard duly promulgated by the Florida Department of Pollution Control.

23. By creating turbidity in excess of fifty (50) Jackson units over the background level the Defendants violated Rule 17-3.05 (2) (b) of the Florida Department of Pollution Control.

24. Defendants, U.S. Army Corps of Engineers and Col. Henry A. Griffith as District Engineer, U.S. Army Corps of Engineers, are subject to the State of Florida requirements concerning water pollution as set forth in Chapter 403, Florida Statutes to the same extent any person is subject to such

requirements by virtue of Section 313 of the Federal Water Pollution Control Act, PL 92-500.

25. On March 15, 1973 the Army Corp of Engineers was notified of the Plaintiff's test results. At that time, the Department of Pollution Control made recommendations as to changes which should be made in the dredging technique so as to reduce turbidity. Those recommendations were ignored.

26. Florida Statute Section 403.141 provides that whoever commits a violation of Florida Statute Section 403.161 (1) is liable to the State for damages caused to the air, waters on property of the state and is subject to a civil penalty for each offense in an amount of not more than $5,000 per offense. Florida Statute Section 403.141 further provides that each day during any portion of which such violation occurs constitutes a separate offense.

27. The Plaintiff on March 15, 1973 notified the Defendant Army Corps of Engineers of the test result and at that time suggested certain recommendations as to changes in the dredging technique so as to reduce turbidity. The Defendants ignored these recommendations.

28. On March 7, 1973 the United States Bureau of Sport Fisheries and Wildlife made Recommendations in writing, to the District Engineer, Army Corp of Engineers, Mobile, Alabama, as to how the dredging project could be conducted without violating Florida water quality standards. Those recommendations were ignored.

29. The dredging project continued and as late as April 1, 1973 was creating excessive turbidity in Pensacola Bay.

0. The maintenance dredging project at Pensacola Bay

resulted in twenty six (26) violations of Florida Statute Section 403.161 (1).

31. As a result of aforesaid violations and the excessive turbidity the Defendants have greatly damaged the waters of Pensacola Bay reducing its recreational value and its value for maintaining a well balanced fish population and as a wildlife propagation area.

32. Pursuant to Section 403.131, Florida Statutes, Defendants are subject to injunctive relief to prevent irreparable injury to the waters of the State of Florida.

33. The effects of turbidity on marine biota are extremely detrimental and permanent. Even after siltation has occurred the new substata is frequently not suitable for the normal fauna and flora. The Defendants by their violations of the Florida Water Quality Standards and by their neglect of their statutory duties have done irreparable harm to the waters of the State of Florida.

PRAYER FOR RELIEF

Wherefore, the Plaintiff prays that this Court enter an Order imposing civil penalties on each Defendant for each offense in an amount of $5,000 per offense.

Plaintiff prays further for damages from each Defendant for the damage done to Pensacola Bay and for the reasonable cost and expenses the state incurred intracing the source of discharge, in controlling and abating the source of the pollutants, and in restoring the water and aquatic life of Pensacola Bay to their former condition. Florida Statute Section 403.141 (2).

Plaintiff further prays that an injunctive be entered compelling each Defendant to cease and desist all violations of the Florida Water Quality Standards contained in Chapter 17-3 of the rules of the Department of Pollution Control, Pollution of Waters.

Plaintiff further prays that this Court issue a mandamus compelling the United States Army Corps of Engineers and Col. Henry A. Griffith as District Engineer to perform their duties as required by Section 313 of the Federal Water Pollution Control Act.

In addition, Plaintiff prays for such further and additional relief as the interests of justice may require.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General
The Capitol
Tallahassee, Florida 32304

JOHN C. BOTTCHER
Assistant Attorney General
2562 Executive Center Circle, East
Montgomery Building
Tallahassee, Florida 32301

Attorneys for Plaintiff

Mr. BALJET. I would like to say that we sincerely appreciated the opportunity to testify here today. Governor Askew has asked me to make myself and our staff available to you to assist in your efforts in any way we can.

I thank you for your kind attention.

Mr. FASCELL. Thank you very much.

Now, we'd like to hear from Mr. Bob Routa, representing Mr. Joel Kuperberg, executive director of the Board of Trustees of the Internal Improvement Trust Fund.

STATEMENT OF JOEL KUPERBERG, EXECUTIVE DIRECTOR, BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, AS PRESENTED BY ROBERT A. ROUTA, LAND MANAGEMENT DIVISION

Mr. ROUTA. Congressman Fascell, and members of the committee, I am here for Mr. Joel Kuperberg, executive director.

Mr. FASCELL. If you'd like, we could make your entire statement a part of the record at this point, and you can summarize what your principal points are.

Mr. ROUTA. Yes, sir.

In responding to Mr. Reuss' letter of April 23, 1973, I should like to follow the same format as presented in the letter. The first question has to do with Florida's actions that would serve to meet the concerns expressed by Secretary of the Army Stanley R. Resor, in his letter of December 4, 1969, to the then Governor of Florida, Claude R. Kirk, Jr.

We could perhaps best respond in general terms by giving a chronology of the changes in State policy, administrative rules, and law beginning in 1970 and running up to this date.

One, the Florida Legislature, in 1970, enacted enabling legislation changing the constitution of the State of Florida to allow sale of submerged land only when such sale was in the public interest. The constitutional amendment was adopted in late 1970 by vote of the citizens of Florida. Prior to this time, such sales could be made when not contrary to the public interest. Excerpts from section 11 of the Florida constitution are furnished for your information.

[NOTE.—The data submitted by Mr. Routa on behalf of the Board of Trustees of the Internal Improvement Trust Fund are in the subcommittee files.]

Mr. ROUTA. Two, in mid-1971, the trustees acted to increase the price of fill material obtained from sovereignty lands from 10 cents per cubic yard to a minimum of 50 cents per cubic yard in the less populous counties of the State to $1 per cubic yard in the populous counties up to a maximum of $1.50 a yard in Monroe County, the Florida Keys. Three copies of this fill policy are submitted herewith. This new policy has resulted in a marked decrease in the amount of applications to dredge from sovereignty lands.

Three, beginning in 1971, a strict interpretation and enforcement of the State dredge and fill permitting system, the Randell Act of 1967, was undertaken.

Four, a legislative bill was filed in the 1971 session which would have required that no lands could be registered with the Division of

Florida Land Sales until such time as the necessary dredge and fill permits had been obtained. This bill died in committee.

Five, the trustees funded, and in early 1972 published, the "Report of Investigation of the Environmental Effects of Private Waterfront Canals." This report pointed up the deleterious environmental effects of box-cut canal systems and prompted the trustees staff to take a position against new applications for canal projects.

In October of 1972, the trustees went on record by their Resolution 72–9 in support of the staff position. A major consideration here was the established development procedure of digging the upland portion of the canal system before applying for permission to connect with navigable water. Copies of these documents are furnished herewith.

Six, in 1972 an amendment to the trustees' principal statute was enacted requiring that prior to consideration of a submerged land sale, the applicant must submit to the trustees a proposed bulkhead line and development plan.

Seven, also passed by the 1972 legislature was an act repealing the exemption which Monroe County had enjoyed under the Dredge and Fill Act.

Eight, in April of 1972, the trustees directed their staff to serve as a clearinghouse for State environmental agencies as concerns work in the navigable waters of Florida. In July of 1972, this program was implemented with a new permitting procedure involving all four of the State's principal environmentally oriented agencies. Copies of the trustees' resolution and permitting manual are submitted herewith.

In specific response to the questions posed by your letter of April 23, 1973, we present the following information:

1(*a*) The proposed system of aquatic preserves mentioned in Secretary Resor's letter has been established and consists of 32 preserves. These preserves are areas of State owned submerged land where special attention has been directed to their management by the Governor and cabinet because they are significant from an esthetic, scientific, or biological point of view.

No significant acreage of submerged lands has been sold by the State or otherwise disposed of during the past year and it is unlikely that any lands within the aquatic preserves would be disposed of for development purposes. A map indicating the location of these preserves is attached to this report.

(*b*) A comprehensive system of bulkhead lines has not been established throughout Florida. However, bulkhead lines in many areas of Florida have been moved to the line of mean high water. A bulkhead line is a line beyond which filling will not be permitted.

However, the establishment of a bulkhead line does not negate the requirement for issuance of a State dredge and fill permit. Detailed scrutiny of all dredge and fill applications has greatly diminished the significance of bulkhead lines. Also, any permit issued by the board of trustees contains a statement to the effect that, "This permit does not waive the requirement for a U.S. Army Corps of Engineers permit."

(*c*) No State policy has been established to control the use of shallow areas between the mean low and mean high waterlines; each permit application is considered on its own merits. All major permit applications are reviewed by four agencies of State government; permits are generally denied for projects involving significant alteration of productive marine habitat.

(*d*) Nine million acres of submerged lands are in State ownership; 475,000 acres have been conveyed into private ownership since 1917. However, conveyance of such lands does not waive the requirement that dredge and fill permits be obtained from local, State, and Federal agencies. Permits have been denied to alter privately owned submerged lands where such works have been shown to be harmful to marine resources.

In 1967, 1,098 acres of submerged land were sold, 148 acres were sold in 1968, 223 acres were sold in 1969, 37 acres were sold in 1970, 4½ acres were sold in 1971, and in 1972, 3½ acres were sold.

(*e*) Through the exercise of its regulatory powers, Florida has attempted to control the coastal development of its vast seashores. Wherever relevant, Florida has also worked in cooperation with the U.S. Army Corps of Engineers with a feeling of mutual assistance. The State has insisted that all developers in the coastal zone apply for and receive appropriate permits before any work is begun below the line of mean high water.

Where the State has been confronted with violations of the appropriate acts and policies in this area, we have brought civil proceedings, encouraged criminal prosecutions, and issued cease and desist orders to the parties responsible. We feel these efforts have been largely successful. However, there are still many areas of the State where violations continue.

2. Many large developments which are presently proposed in different locations in the State all pose different environmental problems. The State can adequately regulate proposed developments below the line of mean high water in navigable waters.

However, presently foreseen problems over wetland areas present a condition about which the State of Florida has not enacted sufficient legislation to regulate. Unless Florida does enact sufficient wetland regulatory legislation, it is a certainty vast environmental damage will be done to the State of Florida by these large proposed developments.

3. Regarding the boundary between State and privately owned lands: It is clear that this boundary is the line of mean high water upon the shore. This agency's position is that the determination of the location of this line should only be done when particular circumstances direct that it be located and not when there is no pressing need for this determination.

This is because the line is ever-changing and it would serve no useful purpose to locate the line of mean high water upon the shore where no development is planned, or there is no boundary dispute between sovereign and upland owners.

The issue is not considered relevant in the Marco Island situation as submerged lands in Marco Township were conveyed by the State in 1928.

Where boundary disputes exist, generally the landowner and the State try to share the burden of establishing the present location of the line. Otherwise, it is our policy that without the existence of a genuine dispute, it is the landowner's burden to locate the line of mean high water.

4. Florida should more closely regulate installment land sales. So, for that matter, should the United States of America. The installment land sales industry as it now operates in the United States is a national disgrace.

As indicated earlier in this testimony, an effort has been made to stem the environmental impact of this juggernaut by requiring that permits to work in the navigable waters be obtained prior to registration of the lots for sale. The present Florida law is a full disclosure law similar in nature and in effectiveness to the Federal act. The bill introduced into the Florida Legislature failed in 1971 and 1972. It has made it out of committee and to the floor of the Senate this year.

5. The coordination by the Corps of Engineers and the trustees concerning permits for works in the navigable water consists of our review of each Corps of Engineers' notice and if a State permit has not been issued for such work, the corps is requested to withhold issuance of a Federal permit until the applicant has made satisfactory arrangements with the trustees. Copies of the State permits are forwarded to the corps districts, and occasionally on large projects, joint meetings between applicants, Federal, and State officials are held.

6. The protection of water quality against pollution caused by heavy metals and other toxicants is of the utmost concern to the continued well-being of the citizens of this country. Similarly, protection of the wetlands is of the highest order of importance. We submit herewith copies of the speech made to the ELMS Committee on the subject of wetlands protection.

7. While the increasing environmental awareness shown by the U.S. Army Corps of Engineers is encouraging, the differences in the corps review of the ecological impact of private developments, as opposed to their own public works projects, gives cause for concern. The selection of spoil sites for dredging of navigation channels should be more carefully coordinated with environmental agencies. The Mobile district has very recently dumped 1 million cubic yards of spoil in an open water disposal site in Pensacola Harbor without giving adequate consideration to biological factors.

At a meeting concerning disposition of spoil dredged from the Apalachicola River, representatives of the Mobile district proposed to discharge spoil into the biologically productive flood plain and disclaimed any responsibility for regulation of activities by private owners in those portions of the river.

While the State and Federal Governments have made substantial progress since December 4, 1969, environmental crises as a result of Florida's burgeoning population continue to occur. Only by increased diligence and cooperation on the part of governments at all levels can the natural resources of Florida be wisely managed for the enjoyment of future Floridians.

Mr. FASCELL. Thank you very much, Mr. Routa.

We would like to hear next from Dale Walker, chief of the environmental protection section of the Florida Game and Fresh Water Fish Commission.

STATEMENT OF DALE WALKER, SECTION LEADER, ENVIRONMENTAL PROTECTION SECTION, FLORIDA GAME AND FRESH WATER FISH COMMISSION

Mr. WALKER. Chairman Reuss, and members of the subcommittee, I am Dale Walker, biologist, section leader of the environmental protection section, Florida Game and Fresh Water Fish Commission, Tallahassee, Fla.

On behalf of the director of the game and fresh water fish commission, Dr. O. E. Frye, who is unable to attend because of previous commitments, I would like to express our thanks to the members of this subcommittee for holding this hearing on the environmental problems of Florida and for inviting our participation.

My agency has been requested to address itself to a number of topics in a limited amount of time. Therefore, I will attempt to give a very general review of the impact we believe each problem will have on the Florida environment. I am aware of speakers who will subsequently address themselves to these issues in greater detail.

Your letter of May 2, 1973, noted particular interest in the current status of the Cross-Florida Barge Canal and the jetport problem; the extent of which current and planned development will adversely affect the Big Cypress area; plans for the Kissimmee-Okeechobee Basin, and various other environmental concerns.

Briefly, our agency's current involvement with the Cross-Florida Barge Canal has been to continue a biological documentation of the Rodman Pool, the only completed reservoir of this now defunct project. I am convinced, now more than ever, that continuation of this project would cause serious environmental damage to the Oklawaha River ecosystem.

In reference to the proposed Everglades Jetport, this agency has reviewed and commented upon the existing Big Cypress training strip site and the alternate sites proposed for the Dade County area. Our recent evaluations show that if the latest proposal—site 14—is accepted, it will result in an irretrievable and irreversible commitment of natural resources. Twenty-nine square miles of conservation area III–B will be drastically altered by jetport activities.

The loss of this acreage will not only compound existing water quality and water quantity problems in south Florida; it will restrict utilization of lands available for public recreation. This does not appear to us to be an acceptable proposal in light of the environmental problems presently being faced by residents of southeast Florida.

This committee has also requested our opinions concerning present and potential impacts of development in the Big Cypress region of Florida. Past construction practices have disrupted natural hydrological cycles which are directly related to the ecological productivity of this unique area of Florida. For example, drainage canals are having adverse impacts on marine productivity and indigenous rare species of plants and wildlife.

We believe this impact will be drastically increased by the influx of people presently being lured there by the promise of good fishing and hunting, clean air, and abundant wildlife—a promise which cannot be met without immediate Federal involvement.

Although Federal acquisition of the Big Cypress area cannot solve all the problems facing rapidly developing southwest Florida, it is one step needed to curb rampant unregulated growth. Acquisition must be combined with sound land use planning enforced by Federal, State, and local governments. Only in this manner can we hope to retain the natural values we deem important to an acceptable quality of life in Florida.

The problems associated with the Kissimee-Okeechobee Basin are closely related to the same threats which face all of Florida. The rapid influx of people forced us to make decisions in the past which we now

find untenable. The Kissimmee River was channelized, at the expense of fish, wildlife, and water quality.

Now we find that this situation must be reversed or we will face massive problems relating to the utilization of a highly eutrophic lake for public water supply. Although Federal and State officials have agreed to study the problems in more detail, I fear that more studies will only serve to document a rapidly decaying ecosystem. Restoration must begin immediately, without delay.

In regard to the adequacy with which the Department of Defense provides public recreational opportunities, the Florida Game and Fresh Water Fish Commission has excellent communications and cooperation with Federal authorities regarding utilization of Department of Defense lands. In fact, under cooperative agreements, Florida sportsmen are granted access to approximately 645,000 acres of hunting and fishing territory that is administered by the Defense Department. We hope that as public hunting lands become less available in Florida, this interagency cooperation will continue and flourish.

The Game and Fresh Water Fish Commission is concerned with the protection of Florida's endangered species and the introduction of exotic species into the State. Twenty-three wildlife species have been designated as endangered, and permits are required to take, sell, offer for sale, or possess these animals.

More than 35 million exotic animals are imported into Florida each year and many of these organisms have been accidentally or purposefully introduced into native habitats. These introductions have resulted in 81 known exotic additions to the fauna of Florida. Regulations and permitting procedures are currently being finalized to eliminate from the pet trade those species of fish and wlldlife which present the greatest potential threat to the environment.

Finally, I would like to address the extent to which the Florida Game and Fresh Water Fish Commission provides to the Corps of Engineers, Environmental Protection Agency, and the U.S. Fish and Wildlife Service our views and comments on the effects of various Corps and Environmental Protection Agency permit applications and also our general views on the effectiveness of these agencies in Florida.

Under the constitution of the State of Florida, the Florida Game and Fresh Water Fish Commission is charged with the responsibility for the protection of wildlife and fresh water aquatic life. In order to understand our involvement with the Federal agencies, one must consider that before a prospective developer can proceed with a project, he must first obtain county, State, and Federal permits.

Our agency normally becomes involved at the State permitting level under chapter 253, Florida Statutes, which describes the functions of the Trustees of the Internal Improvement Trust Fund. If the applicant is denied approval at this level, Federal involvement does not take place.

If the State permit is issued, our comments are transmitted to the Corps of Engineers in fulfillment of the Fish and Wildlife Coordination Act, as amended in 1958. On this level, our agency works closely with the U.S. Fish and Wildlife Service in developing comprehensive evaluations of the considered actions.

Our relationship with the Bureau of Sport Fisheries and Wildlife has been one of complete cooperation. We work closely with the Bureau and normally concur with their official comments. This relationship has been most beneficial to both because of a general lack of manpower on both staffs.

This agency does not comment on Environmental Protection Agency permit applications. In fact, we have never been requested to consider such an application.

Our involvement with other Federal agencies has been for the most part through the State Planning and Development Clearinghouse. This State agency was established to initiate and coordinate Circular A–95 of the U.S. Office of Management and Budget.

Part II of this circular provides that the Federal agency shall provide State and local governments with information on projected Federal development so as to facilitate coordination with State, regional, and local plans and programs.

We have noted several instances within the last year where the Federal agencies have, in our opinion, violated this circular. I am aware of studies on the Corps of Engineers projects, U.S. Department of Agriculture and Department of Transportation projects, that have taken place without coordination with the State Planning and Development Clearinghouse. I believe that if federally assisted programs must take place within the State of Florida, then this circular should be closely followed.

In conclusion, it has become apparent to me, in attempting to answer the questions requested by this subcommittee, that the problems I have briefly mentioned are only symptoms of a much larger and more significant problem. Florida is receiving residents and tourists at an unbelievable rate.

Planners, environmentalists and engineers cannot keep up with this unprecedented growth and the ecological problems which occur as the result of the growth. Federal and State agencies must join together to find ways to curb the influx of people into Florida's ecosystem.

I am convinced that more roads, powerplants, port facilities and public works projects are not the answer. The challenge is to find different ways to operate Federal and State governments to address the real problems and not the effects of those problems.

Mr. FASCELL. Thank you, Mr. Walker. And now, representing our distinguished and able Secretary of State, his administrative assistant, Mr. Nick Leischen.

STATEMENT OF RICHARD (DICK) STONE, FLORIDA SECRETARY OF STATE, AS PRESENTED BY NICK LEISCHEN, ADMINISTRATIVE ASSISTANT

Mr. LEISCHEN. Mr. Chairman Reuss and gentlemen of the committee, I am Nick Leischen, the administrative assistant for the south Florida area regional office for the secretary of state.

I am in deep regret that the secretary has to extend his apologies that, because of scheduling problems, he is not able to be here in person to present his views to you. Since our views would reiterate those already presented by my worthy colleagues, I will not take any further of you time, and will present the secretary's statement to you.

And with that, thank you for inviting our presence on your panel.

Mr. FASCELL. Thank you very much.

The full statement of the secretary will, of course, be made a part of the record.

[Mr. Stone's prepared statement follows:]

PREPARED STATEMENT OF RICHARD (DICK) STONE, FLORIDA SECRETARY OF STATE

Congressman Reuss and distinguished members of the Conservation and Natural Resources Subcommittee of the Committee on Government Operations.

I appreciate your invitation to testify at this hearing on environmental problems in the Florida area. I would like to take this opportunity to commend the 93d Congress and this committee for its concern over the protection of our waters, wetlands and shorelines.

As Florida's secretary of state, it is my privilege to share with the Governor and cabinet of our State the responsibility of protecting our natural resources and the State-owned lands held in trust for the people. In this capacity, we have already taken action on or made policy decisions regarding many of the issues, policies or projects on which your committee will be receiving testimony during this hearing. Many of these issues or projects have come to the attention of Congress either through public works requests from the State or by resolution or action of the Governor and cabinet or the legislature.

Rather than restating or commenting on these various issues, I have accepted your invitation to testify, in order to speak on behalf of a project that I believe is of the highest priority to our State—the acquisition of the Big Cypress Swamp.

As you are aware, we are facing an environmental crisis throughout south Florida involving both the quality and quantity of our water resources. In recognition of this problem the Governor has initiated several studies and conferences during the recent past to discover the scope of the crisis and to find solutions to deal with it. The U.S. Corps of Engineers also recognizes the problem and accordingly has recommended a $260,000 south Florida urban study in the pending public works proposals for fiscal year 1974 to determine what actions should be taken.

While it appears that things are beginning to happen, there remains a great opportunity for Government to act now rather than coming to the rescue at the 11th hour, as we so frequently do.

This opportunity to prevent an inevitable environmental crisis is manifested in the proposed purchase of the Big Cypress Swamp. The simple purpose of this proposal is to remove some 500,000 acres from the danger of development and to maintain this acreage as a fresh water reserve, a buffer zone and extension of the Everglades National Park, and to help insure for future generations the quality and quantity of fresh water in south Florida.

The Governor and cabinet of Florida adopted a resolution on March 7, 1973, asking the President and Congress to join with the State of Florida in acquiring the Big Cypress.

Following that action, the Governor recommended to the Florida Legislature that $40 million in State funds be committed to this end; and such legislation has been introduced and is presently receiving favorable consideration in various legislative committees.

I believe it is fair to say that the purchase of the Big Cypress Swamp is regarded by the State of Florida as a matter of highest priority. It is also obvious that the Federal Government is concerned about the protection of this area and the matter is presently pending in various congressional committees.

It is, therefore, my hope and request today that when your subcommittee reports its findings regarding the protection of Florida's waters, wetlands, and shorelines, the acquisition of the Big Cypress Swamp will be recognized as an action of highest priority.

Thank you for your invitation to participate in your hearing and again allow me to commend you for taking this meaningful step toward the solution of our environmental problems.

Mr. FASCELL. Thank you Mr. Leischen. I'll be very happy to report to the Secretary how intelligent his administrative assistant is. Thank you very much.

Mr. Chairman?

Mr. REUSS. Thank you, Mr. Fascell. And I want to commend all of the witnesses for being most helpful. I would just have one matter to take up with Mr. Baljet:

In your testimony, you referred to several instances of—shall we say—lack of cooperation by the U.S. Corps of Engineers on one of your water pollution certification matters. Specifically, that had to do with the requirement of section 401 of the 1972 Federal Water Pollution Control Act Amendments. That section provides that before the Corps of Engineers issues any permit to anybody to fill land, or build bulkheads, or drain land or whatever, they have to get a certification form the appropriate State water pollution control agency—which in this case would be your agency—that a proposed permit is in the public interest.

You then went on to testify that because of noncompliance with that provision, your office had some communications with the U.S. Army Corps of Engineers, and that specifically, on May 3, 1973—earlier this month—a letter went forward from the Florida Department of Pollution Control to the Jacksonville District of the U.S. Army Corps of Engineers, signed by Mr. James R. Brindell, administrator of your environmental law section. You append a copy of that letter addressed to the Corps of Engineers.

I shall read the operative sentence from the Florida Water Pollution Control Department to the U.S. Army Corps of Engineers:

* * * we request that you not issue corps' permits without actually having received the appropriate certification from this Department as required by Public Law 92-500.

That reference is to the Federal Water Pollution Control Act of 1972; is it not?

Mr. BALJET. That is correct, Congressman Reuss.

[The full text of the letter follows:]

MAY 3, 1973.

Mr. BERNIE GOODE,
Jacksonville District, U.S. Army Corps of Engineers,
200 West Bay Street, Jacksonville, Fla.

DEAR MR. GOODE: Pursuant to our phone conservation yesterday, Mr. Barnes will cease sending you copies of his letters to the Trustees of intent to certify projects pending possible objections raised by this Department's public notices. At the same time, we request that you not issue Corps permits without actually having received the appropriate certification from this Department as required by Public Law 92-500.

This Department is having an increasing number of hearings on certification applications. If you issue a permit without having received a certification, it is quite possible that this Department could be in the middle of a public hearing on the matter. A denial of certification at the termination of such a hearing might then result in some embarassment to the Corps in having to inform the permit holder that he does not have a valid permit.

We appreciate your assistance in this matter and look forward to continued cooperation with you.

Sincerely,

JAMES R. BRINDELL,
Administrator, Environmental Law Section.

Mr. REUSS. You may want to refer to the application that is a part of your documentation, which points out that on November 27, 1972, a gentleman named Mr. Dan B. Cooper of Flagler Beach, Fla., had made an application to the Corps of Engineers to alter the waterways north of Flagler Beach in Flagler County, Fla.

Would you refer to the copy of Mr. Cooper's application? Do you have it in front of you?

Mr. BALJET. I have it in front of me, Mr. Chairman.

Mr. REUSS. Your statement says:

It is interesting to note that the applicant is a vice president of the ITT Development Corp.

Is that correct, to the best of your knowledge?

Mr. BALJET. That is in the submission that has been made a part of the record, Mr. Chairman.

Mr. REUSS. The application made to the Corps of Engineers simply lists the applicant as Mr. Dan B. Cooper of Flagler Beach, Fla., without indicating his connection, if any, with ITT Development Corp. Is that not true, Mr. Baljet?

Mr. BALJET. That is true, Mr. Chairman.

Mr. REUSS. In fact, the ITT Development Corp.'s Palm Coast development is in Flagler County; is it not?

Mr. BALJET. That is correct, Mr. Chairman, to the best of my knowledge.

Mr. REUSS. Would you now refer to the reverse side of the notice filed by Mr. Cooper on November 27, 1972, and tell me whether or not it is a fact that there is an indication there—in a map—that the proposed land alteration was to be completed on land that is said to be owned by Mr. Dan. B. Cooper. And that land directly adjoins land owned by ITT Community Development Corp. Is that true?

Mr. BALJET. That is true, Mr. Chairman.

[The permit notice and drawing follow:]

DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
400 West Bay Street, P.O. Box 4970
Jacksonville, Florida 32201

PUBLIC NOTICE

CAFOE Permits (72-1300)

27 November 1972

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army permit as described below:

APPLICANT: Mr. Dan B. Cooper
P. O. Box 985
Flagler Beach, Florida 32036

WATERWAY: Intracoastal Waterway, Jacksonville to Miami, Land Cut
Matanzas River to Smith Creek

WORK: To construct a bulkhead in said waterway in Section 2, Twp. 12 S., Rge. 30 E., north of Flagler Beach, Flagler County, Florida, as shown on drawing on reverse side of this notice.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on the public interest. Factors affecting the public interest include, but are not limited to, navigation, fish and wildlife, water quality, economics, conservation, esthetics, recreation, water supply, flood damage prevention, water uses, and, in general, the needs and welfare of the people.

Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit.

Plans of the proposed work may be seen at the office of the District Engineer at the above address.

Comments regarding the Application should be submitted to the District Engineer at the above address on or before 27 December 1972.

FOR THE DISTRICT ENGINEER:

Earl G. Linn
EARL G. LINN
Chief, Operations Division

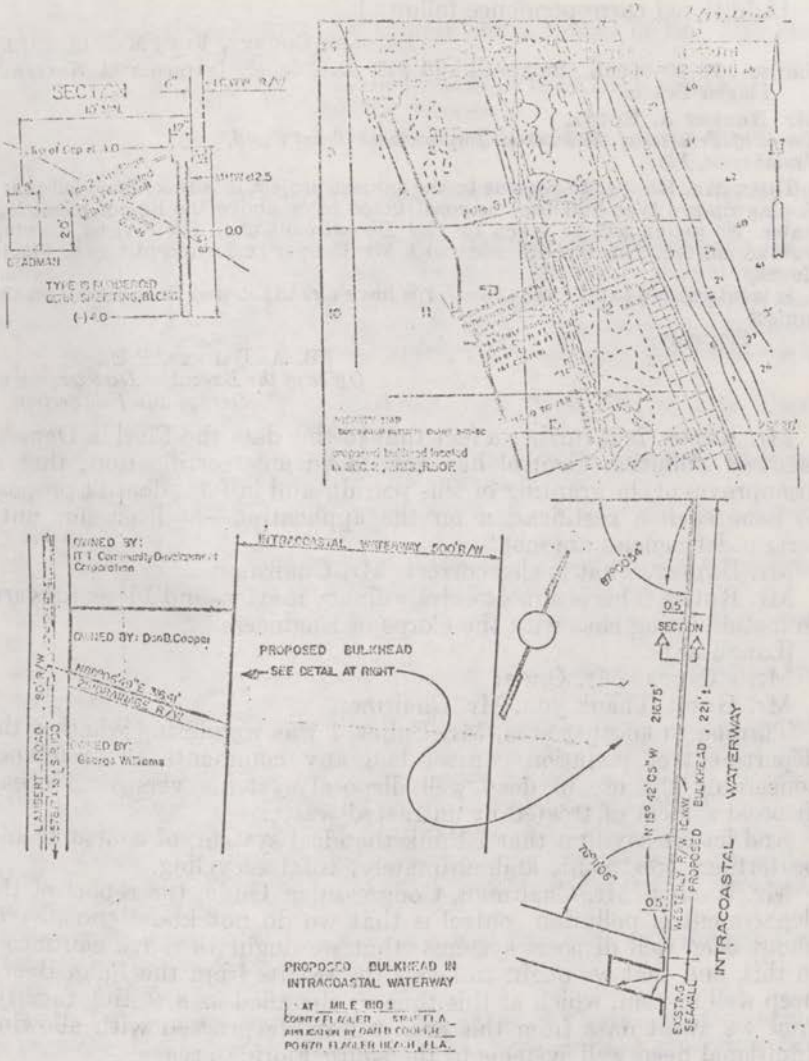
Request

IMPORTANT
This is NOT a circular.

DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, JACKSONVILLE
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

DEC 15 1972

DD-314



Mr. REUSS. I gather the following from your testimony: Despite the May 3, 1973, request from the Florida Pollution Control Department—which you head—that the Corps of Engineers obey the 1972 congressional law and get a certification from the Florida Board of Pollution Control before issuing any permits, that on May 8, 1973—5 days after your letter—the corps did in fact issue permits 72-1300 to this same Mr. Dan B. Cooper. Is that correct?

Mr. BALJET. That is also correct, Mr. Chairman.

[Additional correspondence follows:]

FLAGLER COUNTY, FLA., *May 15, 1973.*

Subject: 18-39-0668E, Bulkhead and Fill, D. Cooper, Intracoastal Waterway, Flagler Beach.

Mr. ROBERT A. ROUTA,
Board of Trustees of the Internal Improvement Trust Fund,
Tallahassee, Fla.

DEAR MR. ROUTA: In regards to the subject project it is recommended that a sloping rip-rap type bulkhead be constructed at or above the line of mean high water. No action will be taken by this Department until the revised drawings were submitted. This was discussed with Mr. Cooper at our recent trip to Flagler County.

It is interesting to note that the Corps have already issued their permit on this project.

Sincerely,

B. A. BARNES, P.E.,
Office of the Executive Director,
Dredge and Fill Section.

Mr. REUSS. Is it further a fact that to this date the Florida Department of Pollution Control has not issued any certification; that it disapproves of the granting of this permit, and in fact, doesn't propose to issue such a certification on the application—at least not until certain deficiencies are met?

Mr. BALJET. That is also correct, Mr. Chairman.

Mr. REUSS. This is a most extraordinary matter, and I look forward to a stimulating chat with the Corps of Engineers.

[Laughter.]

Mr. FASCELL. Mr. Gude?

Mr. GUDE. Thank you, Mr. Chairman.

Turning to another area, Mr. Baljet, I was wondering whether the department of pollution control had any comments or preference concerning the use of deep well disposal systems versus an ocean disposal system of treated or untreated waste.

And let me say first that I think the ideal system, of course, would be tertiary treatment, and ultimately, total recycling.

Mr. BALJET. Mr. Chairman, Congressman Gude, the report of the department of pollution control is that we do not know enough yet about deep well disposal systems; that we ought to move cautiously in this, and that we ought to await the results from the Palm Beach deep well system, which at this time, is classified as a testing facility. And we await data from this area before we proceed with allowing additional deep well systems in the south Florida area.

Mr. GUDE. The testimony that we had earlier, of course, raised a question as to how closely this project was being followed, and how well it was being monitored.

Mr. Routa, I think you gave Mr. Kuperberg's statement. In reference to the disposal of spoil, the Mobile district, I believe, in the statement read, stated that it had recently dumped 1 million cubic yards of spoil in an open water disposal site in Pensacola Harbor without giving adequate consideration to biological factors.

To your knowledge, were there adverse comments to the Corps of Engineers on this open water disposal site?

Mr. ROUTA. Let me comment on that in a slightly roundabout fashion. With the two major districts in Florida, the Jacksonville district comes to us for easements for spoil areas, and in most cases

coordinates with us, where the Mobile district more or less just goes forward with the works.

It was not reviewed in a detailed manner that I am aware of.

Mr. GUDE. You said it was not reviewed?

Mr. ROUTA. It was not reviewed in any detailed manner that I am aware of.

Mr. GUDE. Do you know whether there were comments on it by the Department of Interior?

Mr. ROUTA. I am not aware of the Department of Interior's comments. I know that throughout Florida there have been strenuous efforts made to properly dispose of these spoils on upland sites; and disposal of these spoils in open water areas, especially in Pensacola Bay—where there have been so many water quality problems—is a serious problem.

Mr. GUDE. Did the Florida Game and Fresh Water Fish Commission comment on this disposal?

Mr. WALKER. I don't recall exactly; I believe, however, that we commented adversely relative to this project.

Mr. GUDE. Did you propose an alternate site, or did you merely make adverse comments?

Mr. WALKER. If we commented adversely, I am sure we offered an upland spoil site alternative. This is the normal procedure.

Mr. GUDE. Mr. Baljet, did your agency comment on this spoil site?

Mr. BALJET. Congressman Gude, I am not aware of the specific case. I cannot comment on it.

If you are refering to the case in the Pensacola Bay, where indeed, we did file suit, it was a project that proceeded without any input from the Department of Pollution Control as far as prior comments from our department on this particular issue were concerned.

Mr. GUDE. On page 4 of your statement for the Florida Game and Fresh Water Fish Commission, you state in the second paragraph: "If the applicant is denied approval at this level, Federal involvement does not take place."

Does this mean in the case of any development, any dredging or filling project in the Florida waters?

Mr. WALKER. Yes, sir.

What I was referring to is that the State of Florida is attempting to regulate this type of operation. A State permitting procedure has been established which requires a prospective developer to obtain a State permit prior to a Federal permit. Many environmentally damaging projects are denied at the State level, and, therefore, Federal involvement is precluded. In those cases where an environmentally damaging project is permitted at the State level, our agency's comments are routed to the U.S. Corps of Engineers in compliance with the 1958 Fish and Wildlife Coordination Act.

Mr. GUDE. There seems to be some kind of gigantic bypass going on.

Thank you very much, Mr. Chairman.

Mr. FASCELL. Mr. Finnegan?

Mr. FINNEGAN. Mr. Routa, we have been advised by several citizens that there's some question of the adequacy of public land surveys in Collier and Dade Counties. Do you have any comments on that?

Mr. ROUTA. There are a number of problems with these old surveys, and with old meander lines. Mr. Kuperberg and other members of our staff have been working very carefully with the Federal Bureau of Land Management (BLM). In fact, this past week, he visited some of these sites in Florida with representatives of that agency. He is looking at them very carefully.

There is a very serious problem, and there is a very detailed account of the matter.

Mr. FINNEGAN. Is there any proposal to conduct another survey before there's any more development of the wetlands?

Mr. ROUTA. I think we are going to request such surveys; yes, sir.

Mr. FINNEGAN. Have you gotten any favorable response from the BLM?

Mr. ROUTA. They've indicated to us that they're very understaffed, like the rest of us, but they would do whatever they could under priority consideration.

Mr. FINNEGAN. Thank you.

[Subcommittee correspondence with BLM follows:]

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
RAYBURN HOUSE OFFICE BUILDING,
Washington, D.C., May 11, 1973.

Mr. BURTON W. SILCOCK,
Director, Bureau of Land Management, Department of the Interior,
Washington, D.C.

DEAR MR. SILCOCK: Enclosed is a copy of our letter to Assistant Secretary Reed concerning our forthcoming hearings in Miami, Fla., on May 25 and 26, 1973.

Since writing to Mr. Reed, we have received copies of two articles from the St. Petersburg *Times* relating to questions of U.S. title to many waterfront acres in Collier, Lee, Sarasota, and Charlotte Counties in Florida. Many of these are still undeveloped and are valuable wildlife areas. The November 18, 1972, article quotes a BLM official, Mr. Lane J. Bouman, as stating that uplands not included within the boundaries of a U.S. survey made about 95 years ago "may be considered public land of the United States".

We request that you provide to us by May 21, 1973, whatever information the Bureau of Land Management has concerning the title status of the lands mentioned in these two articles, including survey maps, letters, and other related materials, and indicate what actions have been taken or are planned by BLM to protect and preserve the Federal interest in these lands, and to prevent development thereon until the title issue is resolved. We are particularly interested in knowing whether BLM has notified (a) State officials, (b) local officials in these counties, (c) developers, and (d) citizens about the questionable status of these lands.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

Enclosures.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
1120 (801)

MAY 21 1973

Hon. Henry S. Reuss
House of Representatives
Washington, D.C. 20515

Dear Mr. Reuss:

This responds to your letter of May 11 requesting whatever information this Bureau has concerning the title status of certain lands in Florida mentioned in two articles that appeared in the St. Petersburg Times.

The title status of all of the lands mentioned in these articles is not obtainable from the records in this Bureau. However, we are enclosing copies of correspondence and maps taken from our files that relate to certain offshore islands, the Myakka River area and Marco Island. [Dr. Lutz committee files.]

1. Offshore islands in Collier and Lee Counties. See Exhibit "A" consisting of letters between Mr. Charles C. Matthews and this Bureau.

2. Myakka River Area in Sarasota and Charlotte Counties. See Exhibit "B" consisting of correspondence between this Bureau and the General Development Corporation and other interested parties.

3. Marco Island in Collier County. See Exhibit "C" consisting of a report of a field investigation of Marco Island made to the Secretary of the Interior on December 8, 1925; the response to that report made by the First Assistant Secretary on January 19, 1926; and the decision of the Department of the Interior (51 L.D. 322) that there are no surveyable public lands on this island.

This Bureau has provided Mr. Matthews and the General Development Corporation with forms to be used for filing applications for the survey of omitted lands. This procedure is in accordance with the regulations contained in 43 CFR 9185.1-1(b). The regulations contained in 43 CFR 9185.2-2 require that the applicants for the survey of omitted lands notify State officials and adjoining land owners of their intention to apply for the survey.

20-733 O - 73 - pt. 1A - 11

No official applications for survey have been received from the above parties to date. When received, this Bureau will schedule a field examination, and if the area proves to be unsurveyed public land of the United States, a survey will be made. This Bureau does not have the authority to regulate the use of these allegedly omitted lands until it has affirmatively established that they are public lands of the United States.

The State of Florida has identified certain coastal areas showing lands which appear to have been omitted from the original surveys. A copy of a map showing these areas and the letter of transmittal from the State of Florida are enclosed. The areas referred to in the newspaper articles are also depicted on this map.

In an effort to be responsive to the State's needs and the needs of the public, the Eastern States Office of this Bureau plans to meet with State and County officials and visit some of the areas. It is hoped that this proposed meeting will be mutually beneficial.

Sincerely yours,

Ed Hartley

Acting Associate Director

Enclosures

Mr. FASCELL. Mr. Baljet, I'm still not clear exactly where we stand with respect to the environmental impact statements. It is going to affect the whole rate of progress in Dade County for sewage and water disposal.

I would like to try to start from the beginning again and ask you, since you have had the privilege of holding both hats—one in Dade County and one at the State level: Do you agree with EPA that ocean outfalls are an acceptable interim system of disposal?

Mr. BALJET. Mr. Chairman, Congressman Fascell: The issue of ocean outfalls and their use as a means of disposing of sewage is, of course, in itself a controversial issue. As to whether or not I agree with EPA that we should go to ocean outfalls, I do not think it is the ultimate answer to our sewage problems.

Mr. FASCELL. Can we meet the requirement of law that we not dump in the ocean by 1985?

Mr. BALJET. In my opinion, that would be very difficult.

Mr. FASCELL. How about deep well disposal? Do we know enough about deep well disposal in terms of EPA's statement of 50 million gallons a day?

Mr. BALJET. I do not feel that we know enough about deep well disposal at the moment. I would see a deep well disposal system as a glorified outfall system—especially the strata that the deep well would enter into—and consequently the sewage in the long run would stay in contact or flow out into the Atlantic Ocean.

Mr. FASCELL. This puts us in this kind of dilemma, as I see it, Mr. Baljet, since we do not have the technology or the money to carry out absolute treatment—that is, the capability of recycling the effluent of our sewerage systems—and we do not have an answer in sight yet. Where do we go?

We must do something in the meantime. The problem now has been so delayed in Dade County that if we don't do something there will never be a program. If we're not for septic tanks, if we're not for packaged systems, and admittedly outfalls present some kind of a problem, and we don't know enough about deep wells, and we can't build tertiary plants to recycle—what do we do?

Mr. BALJET. Congressman Fascell, I think it's very important to realize, here in the State of Florida, and specifically the south Florida area, that we should temporarily halt the building of systems until we've found time to really look into the pollution control facilities that are seriously backlogged, as far as keeping up with the——

Mr. FASCELL. That might be all right as far as some long term review of the problem is concerned; but what do we do now with the problem that we have? We can't wait for any further studies, it seems to me, to deal with the problem that we have with the 1,200,000 people in Dade County, where we are prepared to go ahead within the limits of our knowledge. That is the thing I'm trying to get at.

Do you have to sign off on these EPA statements at the State level with respect to what the county is going to do?

Mr. BALJET. Regarding the environmental impact statement, we do have our input, but the final document is formulated by the Environmental Protection Agency. With respect to your initial question, right now, of course, ocean outfalls are an answer to our sewage problem.

Mr. FASCELL. It might not be the ultimate, but there is an answer.

Mr. BALJET. Yes, sir.

Mr. FASCELL. Are you ready to go that far in your own expert opinion with respect to deep well disposal filling?

Mr. BALJET. I am not.

Mr. FASCELL. The site in Dade County that we talked about earlier this morning is a couple of small, private wells; is that correct?

Mr. BALJET. There are 2 4-million-gallon-per-day wells in Dade County.

Mr. FASCELL. They're private, aren't they?

Mr. BALJET. They are private.

Mr. FASCELL. The Palm Beach facility is what? Something else?

Mr. BALJET. The Palm Beach facility, I think, is a municipal or a county facility.

Mr. FASCELL. Is it in existence?

Mr. BALJET. It is not in existence.

Mr. FASCELL. What you had suggested earlier was that we not go to a 50-million-gallon-a-day deep well disposal system in South Dade until we see and learn from the results of the Palm Beach system.

Mr. BALJET. That would be my recommendation, Congressman Fascell.

Mr. FASCELL. What do we do in South Dade, though? It sounds logical until you try to find out what to do with the sewage.

Mr. BALJET. I'm afraid that we cannot jeopardize the environment in South Dade by installing a 50-million-gallon-a-day deep well disposal system just to accommodate future development.

I think the present development there is adequately taken care of by the existing sewage treatment plants.

Mr. FASCELL. What you're saying is: Rather than taking a chance by going to a 50-million-gallon-per-day deep well disposal to provide for future development, expansion, bringing in more people, that we stop where we are because we can handle satisfactorily—at least temporarily—the present sewage disposal problem.

Mr. BALJET. That is correct, Congressman Fascell. I realize that what I am saying is difficult.

Mr. FASCELL. I just want to make clear what we're talking about because I think it's very important to have this vitally clear: As I understand it, the impact statement—the final impact statement that's going to hopefully turn loose all the Federal money to match the local money—is practically ready to be issued.

However, I don't believe it yet, despite what we heard earlier. As I understand it, you have had your input at the State level; the county has agreed; the regional office is finally signing off on the EIS; and that's going to eventually turn loose the money.

At that point, we're going to start building. I understand from the county that they're tearing their hair out because they're already 5 years behind in their construction program. So at this late date, to find this kind of reservation built in at the State level is kind of surprising.

That's the only point I'm making.

The next question is this: What input do you have at the State level with respect to priorities in this program? We heard this morning that there are only two priorities for Dade County for 1973 funding, and we have absolutely no knowledge from anybody with respect to the possibilities of 1974. Do you at the State level have anything to say about this?

Mr. BALJET. We have, of course; it's the State Department of Pollution Control that establishes the original list, based on the priority system that we agree upon with the Environmental Protection Agency. And I think at this time I would like to indicate that in the usual fashion, we and the Environmental Protection Agency will get together on the projects—on the priority list.

Mr. FASCELL. Is there an agreement between the State of Florida and the regional office of EPA as to what the State priority will be or what fund allocation is available?

Mr. BALJET. That is correct. The State, of course, will have its primary input, but I think it is vital we have cooperation with the Environmental Protection Agency on the entire issue.

Mr. FASCELL. I agree.

The thing that stuck in my mind was that one of our Dade County witnesses said that the allocation for Tampa is already $30 million, while that for Dade County is $13 million. It left the implication that there was some question with respect to the decision on the determination of priorities.

I want to know if that implication is fair, or proper. Or is it because some paperwork remains undone, or for some other reason?

Mr. BALJET. The decision is based on the new requirements of Public Law 92–500, and the new emphasis that has been placed on the priority list as far as stating water bodies that have serious problems and putting these primarily on the list; and of course, taking the applications in sequence when they arrive at the office.

I have with me Mr. Dave Scott, who might elaborate better on this program here.

Mr. FASCELL. Mr. Baljet, you are a very fine man, and I've always admired your straightforwardness, not only in Dade County, where you stuck to your guns despite tremendous pressure, but also at the State level. Are you taking applications of this kind in any kind of sequence? It doesn't make much sense to me when we are talking about priority. Date of filing ought not have anything to do with priority.

Mr. BALJET. Let me assure you, Congressman Fascell, that that is not the case, and that is not what I meant by making that statement.

Mr. FASCELL. I'm glad that I asked you.

Mr. BALJET. I'm just saying that there is a time limit for applications to be received. When that time limit, has passed and we receive an application for a certain project, usually we have to consider it for the next fiscal year.

Mr. FASCELL. How about Dade County? Where are we with respect to our applications?

We've only had two for 1973 allocations and fiscal year 1973 is about to terminate. What is the deadline with respect to 1974 allocations? And where in the process is the priority makeup for 1974?

Mr. BALJET. I yield to Mr. Dave Scott, with your permission. Dave Scott is the Director of the Division of Planning. He has the primary control of the priority list in consideration of applications.

Mr. FASCELL. Mr. Scott?

Mr. SCOTT. If I might go back to Tampa relative to Dade County, the city of Tampa and the city of Fort Lauderdale were on the Department's priority list for fiscal 1972. They required so much money, it would have essentially wiped out the construction grants program.

And on agreement with the Department, those two applicants were postponed until fiscal year 1973, in order that about 40 other projects could receive Federal grants, and go ahead and get started with construction.

This is the reason the city of Tampa is No. 1 on the fiscal 1973 priority list. An additional factor is that the $30 million that has been mentioned with regard to Tampa is a total allotment which will go into the construction of that Tampa facility; whereas the $13 million, I believe mentioned for Dade County, represents only the fiscal 1973 allocation to Dade County.

And we do have reason to believe that there will be carryovers into the fiscal 1974 money, or into the 1974 priority list, which will be obligations brought forward in the 1974 list pertinent to Dade County. So we are looking at fiscal year 1973–74 allocations for Tampa in lieu of wiping out the construction grants program for fiscal 1973, as contrasted with looking only at the fiscal 1973 money set aside for Dade.

If I may progress to your next question, Congressman Fascell, the status right now is that we had sent out invitations to receive back applications for participation in this program. The applications were due back May 15, which was just a few days ago.

We have put the applicants on notice that the remainder of the fiscal 1973 projects that were ready, willing, and able to go, will be reinstated on our fiscal 1974 list. We are opening it up to new applicants also.

Mr. FASCELL. So you readjust priorities based on submissions?

Mr. SCOTT. We will readjust priorities; yes, sir. As to timing, it will take us several more weeks in order to completely review these applications.

The final document, which would come in in mid-September, would be the facility plans pursuant to the title II regulations. At that time, we will know the final status of the priority list.

Mr. FASCELL. When do you know if you will receive allocations from EPA for fiscal 1974?

Mr. SCOTT. We believe we know now what the total amount will be, barring any change.

Mr. FASCELL. What do you think it is?

Mr. SCOTT. $108 million, sir, roughly.

Mr. FASCELL. Thank you very much.

Mr. Baljet, gentlemen, we thank all of you very much. We appreciate your coming here, answering our questions, and helping us in this study.

The subcommittee will stand in recess until 2:15.

[Whereupon, at 1:45 p.m., the subcommittee recessed, to reconvene at 2:15 p.m., the same day.]

AFTERNOON SESSION

Mr. FASCELL. The subcommittee will please come to order.

Let me say first that we have now been joined by our distinguished colleague, and ranking minority member, Congressman Guy Vander Jagt of Michigan. We are very happy to welcome him to these hearings. He always makes an outstanding contribution.

The panel members who are here with us now this afternoon have been waiting patiently and we thank all of you.

Rear Adm. William M. Benkert, Col. Emmett C. Lee, June Whelan, Robert W. Rust, and Robert Bacon, would you please come to the table, make yourselves comfortable, and we will proceed.

I am sure all of you can appreciate the subcommittee's problem. You have been most cooperative already in responding to our inquiries in considerable detail, so let me just state again, for the record, that all the statements, together with the appendixes, will, without objection, be placed in the record. Each witness will have his or her statements and appendixes included in the record in full, and we will ask you to make your comments in summary form to cover whatever points you feel should be emphasized.

First, Rear Admiral Benkert, Chief, Office of Marine Environment Systems, U.S. Coast Guard. Admiral?

STATEMENT OF REAR ADM. WILLIAM M. BENKERT, CHIEF, OFFICE OF MARINE ENVIRONMENT AND SYSTEMS, U.S. COAST GUARD

Admiral BENKERT. I am glad to be here, gentlemen.

As you know, the Coast Guard has submitted what I feel is a rather complete and extensive statement for the record in response to the inquiry received from the subcommittee, and I would just like to make a very short and very brief statement in summary, if I might.

It is my pleasure to be here, and I am speaking, of course, on behalf of Admiral Bender, Commandant of the Coast Guard. He wanted me to be sure to express our appreciation for the opportunity to speak with you today.

I think you all know, gentlemen, that the Coast Guard plays a major role in protecting Florida's and other areas' environment. Our experience in pollution law enforcement includes efforts under the Refuse Act of 1899, the Oil Pollution Act of 1961, the Federal Water Pollution Control Act as amended and the Port and Waterways Safety Act of 1972.

My detailed statement explains our environmental protection program and its implementation to protect and improve Florida's marine environment. We believe our program is responsive to the needs of the citizens of Florida. I would like to stress just one item with regard to the content of my formal statement. This is in reference to bridge administration matters. Our detailed statement speaks to the issues that you have raised in your previous inquiry and I would like to make three points.

First, the Coast Guard is in full compliance with the requirements of the National Environmental Policy Act of 1969.

Second, regarding the issuance of bridge permits after the fact, which you have questioned, we do not feel this has been a serious problem since only two after-the-fact bridge permits have been issued in the seventh district since 1966, a period in which about 350 bridge permit applications have been considered.

The third point covers Coast Guard jurisdiction over the Venetian Waterway in Hallandale, Fla., and in this case, our chief counsel at the time of the original discussion reversed the decision of the Coast

Guard and found that the waterway was navigable, and bridge permits were required.

I think I mentioned before, sir, that your request for my appearance contained some rather lengthy and detailed questions which I think we have answered fully in the statement, and I am prepared to speak on any specific question which you might ask me this afternoon.

Thank you, sir.

Mr. FASCELL. Thank you very much, Admiral, and your prepared statement will be incorporated in full in the record at this point.

Let me also express, on behalf of the subcommittee, our thanks for the cooperation we received from the Coast Guard in helping us with our transportation problems. You have been extremely cooperative, and we appreciate it very much.

Mr. FASCELL. Colonel Lee?

[Admiral Benkert's prepared statement and the detailed report of the Coast Guard are printed in app. 1, pp. 341–418 of these hearings.]

STATEMENT OF COL. EMMETT C. LEE, JR., DISTRICT ENGINEER, JACKSONVILLE DISTRICT, U.S. ARMY CORPS OF ENGINEERS; ACCOMPANIED BY JACOBUS J. LANKHORST, OFFICE OF THE CHIEF OF ENGINEERS, WASHINGTON, D.C.

Colonel. LEE. I am Col. Emmett C. Lee, Jr., District Engineer, U.S. Army Engineer District, Jacksonville, Fla. I am accompanied by Mr. Jacobus J. Lankhorst from the Office of the Chief of Engineers, Washington, D.C. It is a pleasure for us to appear before your subcommittee to participate in your review of environmental matters in the Florida area.

The Chief of Engineers by letter dated May 21, 1973, furnished to you detailed responses relative to those issues and matters as to which this subcommittee has expressed an interest. My purpose this afternoon is to be available to respond to any further questions you may have as to the corps activities in the Florida area. Mr. Lankhorst is available to respond to questions involving departmental policy and practices on enforcement of corps statutory authorities. We will respond to the best of our ability; and as to specific matters not within our capability to answer this afternoon, we will be pleased to supplement the record accordingly. Likewise, our files and records on specific matters are always available for inspection by your staff.

Mr. Chairman, that concludes my statement.

Mr. FASCELL. Thank you very much. We appreciate your foresight in having with you Mr. Lankhorst from the Chief's office so we can direct to him any policy questions that may arise.

Without objection, the attachments to your statement will be made part of the record.

[The May 21, 1973, data, submitted by Lt. Gen. F. J. Clarke, Chief of Engineers, in response to questions submitted by the subcommittee in connection with these hearings, are printed in app. 2, pp. 419–570.]

[By letter of July 6, 1973, Colonel Lee responded to an October 1, 1971, letter from Subcommittee Chief Counsel Ph neas Indritz requesting information on Marco Island. The data submitted by Colonel Lee are in the subcommittee files. The two letters follow:]

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., October 1, 1971.

Mr. WILLIAM A. NEWBERN, Sr.,
Executive Assistant, Department of the Army, Jacksonville District, Corps of Engineers, Jacksonville, Fla.

DEAR MR. NEWBERN: Thank you for your letter of September 21, 1971, in reply to my letter of August 26 concerning the proposal to dredge and fill 10,000 acres of the Everglades in the State of Florida by the Marco Island Development Corp.

Your letter notes that the Corps issued permits under the 1899 River and Harbor Act for "two portions" of the Marco Island development. We understand that one of these areas was the Roberts Bay area, and that a permit was issued in 1969 by the Corps over the objections of the Department of the Interior. We request that you provide to us a copy of that permit and a copy of all letters, notes, memoranda and other materials in the file concerning that permit.

Please advise us when an application is filed for a permit in connection with the additional development by the Marco Corporation, and provide to us a copy of that application together with all pertinent material.

Sincerely,

PHINEAS INDRITZ, *Chief Counsel.*

DEPARTMENT OF THE ARMY,
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS,
Jacksonville, Fla., July 6, 1973.

Hon. PHINEAS INDRITZ,
Chief Counsel, Conservation and Natural Resources Subcommittee, House of Representatives, Washington, D.C.

DEAR MR. INDRITZ: Your letter of 1 October 1971, copy enclosed, asked that we advise you when additional permit applications are filed for the Marco Island Development south of Naples, Florida.

Three applications have been received from the Deltona Corporation for developments in the areas known as Barfield Bay, Big Key, and Collier Bay. Copies of the letters of application, application forms and drawings are inclosed as requested.

The applications are being held in abeyance pending certification from the State of Florida Department of Pollution Control. The staff of the Department of Pollution Control has recommended to the DPC Board that certification be denied but a final decision has not yet been made by the Board.

If certification is granted, a public notice will be issued to all known interested parties for comment. Also, we intend to prepare an Environmental Impact Statement in accordance with Public Law 91–190 before a final decision is made on the application.

Sincerely yours,

EMMETT C. LEE, Jr.,
Colonel.

Mr. FASCELL. Next we will hear from Ms. June Whelan, Secretary of the Interior's field representative for the southeast region.

STATEMENT OF JUNE WHELAN, SECRETARY OF THE INTERIOR'S FIELD REPRESENTATIVE, SOUTHEAST REGION, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY C. EDWARD CARLSON, REGIONAL DIRECTOR, BUREAU OF SPORT FISHERIES AND WILDLIFE, ATLANTA, GA.; AND RAYMOND COULTER, REGIONAL SOLICITOR, ATLANTA, GA.

Ms. WHELAN. My name is Ms. June Whelan. I am special assistant to the Secretary of the Interior for the southeast region. I also have with me several regional representatives from various internal bureaus whom I will call on to answer specific questions if needed: Mr. C. Edward Carlson, regional director of the Bureau of Sport Fisheries and Wildlife in Atlanta; and Mr. Raymond Coulter, regional solicitor for the Department of Interior, also located in Atlanta.

Our prepared testimony, responsive to the questions posed by the committee in its letter of April 27 to the assistant secretary, is rather extensive and we are glad to submit it for the record to assist the committee in its timely inquiry into the environmental problems of the Florida area.

Rather than attempting to summarize the details of that testimony, we address in this short statement the policy and procedural problems confronting our department in its programs related to those environmental problems. The central focus of the Department's programs is, of course, improvement in land and water management in the public interest, with particular emphasis on the lands and waters where the Federal interest is paramount—that is the navigable waters and their associated wetlands.

As the committee knows, our Bureau of Sport Fisheries and Wildlife—with assistance of other bureaus of the Department and other Federal as well as State agencies—has for many years spearheaded efforts to protect the Nation's wetlands from needless damage and destruction. We have been gratified and encouraged by the increasing attention given wetland protection in recent years—by the courts, by State and local governments, by the Federal administration generally, and not the least, by your committee and the Congress.

Enlightened policies have been propounded on every front—most recently the corps' proposed navigation permit regulations published for comment on May 10. The new corps regulations will be of substantial assistance in increasing protection of the Nation's wetlands and the corps is to be commended for their efforts in this regard.

There are, however, several areas where we have experienced and anticipate continued problems of implementing these new policies.

The department has underway at the present time efforts to resolve these problems, and particularly to improve coordination procedures with the State and Federal agencies. Inasmuch as this committee has asked us to comment on these problems, we will cover briefly the more salient issues you have asked about.

A major problem centers on achievement of effective control of damaging illegal activities conducted by developers in navigable waters. This is a multifaceted problem involving inadequate surveillance; uneven, occasionally dilatory, and cumbersome enforcement procedures; and an increasing incidence of both illegal and legal activities.

The lack of adequate surveillance has been largely one of insufficient manpower and supporting resources, but we are confident that this problem can be greatly reduced if given proper attention. Ongoing aerial—including satellite—programs offer obvious possibilities for upgrading surveillance in a program coordinated with general surveys.

We believe a program of regular, continuing surveillance can and should be established as soon as possible by cooperative Federal-State action involving all concerned agencies, including the Corps, Coast Guard, EPA, NOAA, Interior, and perhaps other Federal agencies as well as State agencies.

The problem of uneven and cumbersome enforcement has frustrated much of the surveillance effort expended by our Bureau of Sport Fisheries and Wildlife. Delays in acting upon discovered apparent illegal activities often result in irreparable harm being done to public resources. If District Engineers were delegated authority in the new proposed regulations to call directly upon U.S. attorneys for assistance rather than being required to seek such assistance—through channels—from the Office of the Chief of Engineers as prescribed in the Corps' recently proposed regulations, action could be greatly expedited.

Solution to the problem of uneven enforcement is even more complex. At root, it is perhaps mainly a manpower problem but it also is one of indoctrination and dedication. Both District Engineer offices and U.S. attorneys' offices as well as those of other concerned agencies, including our own, quite naturally exhibit variable interest and dedication in protecting the public interest.

The Bureau of Sport Fisheries and Wildlife has taken a number of recent actions to rectify its deficiencies in relation to this problem. It has established several new coastal offices, one of which is in Panama City, Fla., and it has substantially increased its field forces and activities relative to navigation permits.

The Bureau also has placed great emphasis on indoctrination of field forces through training workshops, preparation and issuance of instructional materials, and revitalizing its supervisory organization.

But the results of the Bureau's increased effort have not been thus far encouraging. For example, of the 121 apparent violations reported by the Bureau to the Jacksonville and Mobile districts, combined, during the 21 months, July 1971 through March 1973, to our knowledge only one case has been brought before a court and only seven others are being considered for legal action. The Bureau's records indicate that an average of 54 days elapsed between its reporting of an apparent violation in Florida and the first written response by the Corps.

Obviously a lot of wetlands can be filled or shallow waters dredged and their productivity permanently destroyed in 54 days with present-day construction methods. Just as obviously, action could be and must be taken in a matter of a few hours or days if we are really dedicated to saving the Nation's wetlands as our Federal policies proclaim.

The Bureau's field forces are willing, even anxious, to do their part in surveillance of illegal activities; but they must have better support from the enforcement agencies. Enforcement procedures must be greatly streamlined and more effectively coordinated.

The problem associated with the increasing incidence of legally permitted activities is one of well-trained manpower, as well as failure to enforce existing Federal laws and policies. The committee knows

from data furnished it by this Department on February 5, 1973, that the Corps permit program has grown and the reporting on Corps permits by the Bureau of Sport Fisheries and Wildlife has grown markedly in recent years. While the nationwide number of permits processed by the Corps has increased from 4,042 in fiscal year 1970 to 6,272 in fiscal year 1972, the Bureau reporting on these permits has jumped from 470 in fiscal year 1970 to 1,181 in fiscal year 1972.

A second and perhaps equally challenging major problem area is that of construction and maintenance of Federal navigation projects. Granted continuing development and maintenance of navigable waterways generally is essential to the public welfare. But a concerted monumental effort must be made soon to solve the problem of disposng of spoil in environmentalliy responsible ways, lest we fill every shallow and wetland near to a waterway and degrade every adjcining water with the pollutants stored in harbor muds.

Pending solution of this basic problem, there are short-run procedural problems for which solutions appear obvious. The salient one of these is poor coordination in the planning of maintenance dredging for Federal navigation projects. Although it appears certain that maintenance work must be planned, programed, and budgeted well in advance of the actual work, the Bureau of Sport Fisheries and Wildlife finds that it is often consulted only within a few weeks or days, if at all, of when work is scheduled to begin.

Consultation during early planning would greatly increase the probability of finding least damaging spoil disposal sites and reduce the cost of replanning where required to save environmental values.

More importantly, however, is the fact that the corps is not at present adequately responding to recommendations of the Fish and Wildlife Service relative to the planning of civil works maintenance dredging. At present, many districts elect to ignore our recommendations and proceed with environmentally damaging plans.

Specifically, if a given corps district elects to ignore the recommendations of the Bureau designed to reduce adverse impacts on the environment, there is no existing procedure requiring a formal review of the situation at higher levels of command within the two agencies consonant with the memorandum of understanding between the two departments.

It is our belief that such a review procedure should be established, perhaps utilizing either the new proposed corps regulations as the vehicle for the procedure or a revision of the memorandum of understanding. We are planning to initiate discussions with the Chief of Engineers in this regard in the near future.

A third major problem area relates to the limits of Federal jurisdiction and is closely related to the problems of controlling illegal activities. As the committee will find from our prepared testimony, many environmentally damaging developments in Florida involve construction or networks of dead end canals on upland or in freshwater marshes which are intended to be connected to navigable waters.

All too frequently, major projects adjacent to navigable waters are planned, properties sold and construction begun before the necessary Federal permits to connect with navigable waters are applied for or obtained. Thus, with the advertisement of a public notice the Federal Government is put in the position of attempting to objectively review project proposals after much of the construction and associated

damages are completed. These situations leave the Government evaluators with few options and little latitude.

This practice is being used more and more by major developers of venetian or finger fill canal projects in upland areas. The apparent attempt from this approach is to favorably influence the Federal Government's handling of the permit through the applicant's past commitments and the fact that the permit application only applies to that portion of the entire project's activities which connects with navigable waters.

Developments of this type, including such projects as ITT and Marco Island, are especially difficult to evaluate in true perspective. We believe that changes should be included in the new corps regulations to strengthen the Federal ability to review all projects which affect navigable water prior to initiation of any construction.

Further, corps and Justice Department enforcement procedures should be stricter on these types of "back door" projects.

Two other types of damaging developments illustrating the problem are developments outside commercially important navigation fairways, including those shoreward of harbor lines, and developments on productive high marsh or other wetlands above the elevation of mean high water. Protection of our Nation's wetlands should be based on a goal to preserve the total individual ecosystems involved and not restricted to jurisdiction limited to a mean high water boundary.

In this respect the limitation of Corps of Engineers' authority to mean high water does not always coincide with the ecological boundaries of the wetlands that should be protected by the permit system. Gradually, new law and policies are evolving which will protect these associated areas above mean high water.

This is an area where further effort is needed, and one which may ultimately be decided by the courts.

In summary, the Department of the Interior believes that substantial progress has been and is being made in protecting our Nation's wetland heritage. However, much remains yet to be done and we in the Department of the Interior will continue to work with the other Federal agencies to find solutions to the remaining problems.

[The Department's detailed response to the subcommittee's questions is printed in app. 7, pp. 1504–2200 of these hearings.]

Mr. FASCELL. Thank you very much, Ms. Whelan.

Our next witness is Mr. Robert W. Rust, who is the U.S. attorney for the southern district of Florida.

Mr. Rust, we're very happy to welcome you before this committee, and to receive your statement.

STATEMENT OF ROBERT W. RUST, U.S. ATTORNEY, SOUTHERN DISTRICT OF FLORIDA

Mr. RUST. Thank you Congressman Fascell and Mr. Chairman, and distinguished members of the congressional committee. My name is Robert W. Rust, I am U.S. attorney for the southern district of Florida, and I am pleased to appear before you today in response to your invitation.

Perhaps to set the scene, I must say that the southern district of Florida extends from Vero Beach on the east coast of Florida down to

Key West and back to Naples; so, generally, it is the southern coastal section, as well as the interior including all of Lake Okeechobee, that is included in the southern district of Florida.

I have delivered to the committee those specific answers to those specific questions as set forth by Congressman Reuss' letter of April 27, 1973, including a table of cases that sets forth the status of pending litigation as well as litigation that will be filed shortly.

And I would like to request this honorable committee to recognize that this information, under the rules of court and ethics of the Bar Association, will be appropriate, certainly for the committee, but not for distribution.

Mr. REUSS. Let the record show that the information furnished to us by the U.S. attorney will be kept confidential, as he suggests.

Mr. RUST. That is merely the last exhibit attached to the package you have.

Mr. REUSS. We thank you for preparing the material, and we respect your request.

Mr. RUST. Thank you, sir. I first might say that my summary basically relates to the problems here in this area, and I speak, of course, for myself as a U.S. attorney; I do not peak to the national problems that perhaps an assistant attorney general would speak to.

My summary and my package relate directly to specific problems that I see right here in the southern district of Florida. I might start by saying that the personnel assigned to environmental matters in my office, based on the current flow of litigation reports from the Federal agencies, is three assistant U.S. attorneys assigned to the specific litigation relating to enforcement of sections 9 and 10 of the River and Harbor Act of 1899; the Refuse Act of 1899; and other environmental laws and regulations.

The U.S. attorney's office for the southern district of Florida is comprised of a complement of 24 assistant U.S. attorneys. Our present strength is 23 assistant U.S. attorneys. Five of these are assigned to our civil division; 15 assistants are assigned to our criminal division; 2 assistants are assigned to the Miami unit of DALE—drug abuse law enforcement—and 1 assistant is assigned as executive assistant to the U.S. attorney. One additional assistant U.S. attorney will fill the current vacancy in July 1973.

We have 28 clerks and secretaries authorized. For the most part, three secretaries support the three assistant U.S. attorneys assigned pollution and environmental responsibilities, although additional clerical and secretarial personnel provide support as required.

All of the assistant U.S. attorneys and secretarial personnel have other areas of responsibility, in addition to pollution and environmental matters as set forth in the attached civil and criminal assignment list—effective April 30, 1973—which formally lists the areas of responsibility of each assistant U.S. attorney in the southern district of Florida.

I might mention that our caseloads change frequently from month to month. We might get more narcotic cases or FBI cases, so every 3 months we revise our specialty assignment to each assistant U.S. attorney to take into consideration changes in the inflow of cases.

Because of the hundreds of statutes—both civil and criminal—assigned by the Congress to the U.S. attorneys for enforcement, it is

difficult to assess a percentage of a total budget devoted to pollution, narcotics, bank robbery, and so forth.

However, we do consider pollution and environmental cases to be of a higher priority than many of the other statutes that we are responsible for enforcing. We try to enforce all the statutes where there is sufficient evidence to prosecute—set forth in a litigation report prepared by the appropriate Federal investigative agency—within the limits of the number of assistant U.S. attorneys and clerical personnel as authorized by the Department of Justice, pursuant to the total number of employees for the U.S. attorneys' offices authorized by Congress each year.

No investigators are assigned to the U.S. attorney's office, southern district of Florida—only attorneys, clerks, and secretaries. We rely upon the various other Federal agencies for this type of investigative support.

Second. The extent to which my office's cases have increased: I have been the U.S. attorney for 3½ years. During the preceding 3½ years, there was one environmental case filed.

During the 3½ years of my tenure, there have been 60 environmental cases filed. Also, during my tenure, the number of attorneys assigned this office has increased from 14 to 24, as a result of increased appropriations from Congress.

However, the increase in lawyer personnel has largely been allocated to the tremendous increase in criminal prosecutions. This allocation has been necessitated by virtue of the fact that the southern district of Florida ranks as the second in the country in the number of drug traffickers.

I have recently recruited a retired Coast Guard commander, who served as legal officer of the 7th Coast Guard District, which constitutes the Southeastern United States and the Caribbean. This assistant U.S. attorney has experience in certain technical phases of environmental law and will be devoting an increasing amount of his time to environmental matters as required.

I have pending at the present time with the Department of Justice a request for additional personnel. If approved, this would allow additional manpower to be available for environmental litigation.

The total number of trained professional environmental investigators existing within the United States, knowledgeable in the areas of the rules of evidence and techniques for gathering admissible evidence, is very small. Therefore, it would appear that a crash program to train additional investigators in this field would be helpful.

An increase in the number of such trained professional investigators would automatically increase the number of investigative, litigation, reports delivered to the U.S. attorney's office for prosecution. Of course, an increase in the number of investigative, litigation, reports in the future would create a need for additional AUSA, assistant U.S. attorney, manpower as well.

By the same token, a decrease in the number of investigative, litigation, reports delivered to U.S. attorneys' offices—whether they be environmental investigative reports or narcotic violation reports—normally would call for less AUSA manpower, assuming the average complexity of such reports remains the same.

It goes without saying that due to the hundreds of statutes for which U.S. attorneys' offices have responsibility, it is difficult to estimate the future flow of incoming investigative, litigation reports. However, it is safe to say, based on past experience, that the Federal Government—including Congress and the executive branch—is increasing Federal activity in the areas of criminal and environmental enforcement and therefore additional AUSA's will be necessary in the future to handle this increased activity.

Our own records indicate a tripling of the criminal convictions obtained by the U.S. attorney's office for the southern district of Florida in fiscal years 1972 and 1973, when compared to the numbers of such convictions obtained during fiscal years 1968 and 1969.

Of course, training is important for new assistant U.S. attorneys as well, whether it be in the environmental field, or other criminal or civil field. There is no U.S. Department of Justice formal basic training school for new prosecutors, other than infrequent 1- or 2-day orientation seminars.

There are two such private schools: (1) University of Houston Law School-National District Attorneys Association College for Prosecutors; (2) a course at Northwestern University Law School, offered by Dr. Fred Inbau, who has an excellent reputation. Both are 30-day inhouse courses.

I have applied to Department of Justice formally in writing each year for approval to send new assistants to these two private courses. No assistant of mine has ever been approved to go; nor am I aware of any assistants that have attended from any other district. I have been advised that there is no money available for such training.

The new Deputy Attorney General appears to be very interested in training; he advised us several weeks ago that he has recommended that $250,000 be budgeted for training assistant U.S. attorneys in fiscal year 1974. Hopefully, it will be adopted by the Congress.

Turnover is a problem. Assistant U.S. attorneys during my lifetime have served for no more than 2 or 3 years at the most. I'm sure that would be true in your districts as well.

Salaries are now better than they have been for the younger AUSA's; however, salaries for senior assistant U.S. attorneys are not comparable to private practice, and of course, there is no job security whatever—each assistant serves at the whim of each new administration. I can personally attest to this from my experience as an assistant U.S. attorney during the late 1950's and early 1960's.

I think that if we are to have the best possible professional operation, we will have to retain more assistant U.S. attorneys by making a career not only possible but attractive. If we do not, then U.S. attorneys' offices will continue to offer young men and women an opportunity to gain a couple of years' experience, prior to their entry into private practice.

The Refuse Act has proved to be a very effective tool for the abatement of pollution. The very first civil action ever brought under the Refuse Act to abate pollution was filed in my district on March 13, 1970, to require the Florida Power & Light Co. to cease its discharges of heated water into Biscayne Bay.

That suit was eventually settled by the entry of a consent decree which required the Florida Power & Light Co. to spend in excess of

$20 million to build a system of cooling ponds and canals. That system is now in operation, and I am advised that it is functioning very well.

Ever since April 7, 1971, U.S. attorneys have been authorized by the Department of Justice to accept direct referrals of Refuse Act cases from the EPA and the Corps of Engineers.

Unfortunately, since the enactment of the Federal Water Pollution Control Act Amendments of October 18, 1972, the Justice Department can no longer bring significant actions under the Refuse Act either to abate or punish pollution, since section 402(k) of the Federal Water Pollution Control Act Amendments states that all discharges which are the subject of a pending application for a permit under the old Refuse Act permit program shall not, until December 31, 1974, be deemed to be in violation either of the Refuse Act or of the Federal Water Pollution Control Act.

Since most particularly offensive, continuing, discharges have been the subject of applications for permits under the old Refuse Act permit program, there is, obviously, little scope left for the application of the Refuse Act.

As a U.S. attorney, interested in having available to him means for protecting the environment, I am, of course, most dismayed by this development. However, section 10 of the River and Harbor Act of 1899—the section which prohibits the dredging out or filling in of the navigable waters of the United States without a permit for the Corps of Engineers—remains a valuable tool for protecting marshes and coastal areas, and I bring cases under these statutes whenever I have the opportunity.

In conclusion, I attach a copy of the guidelines for Federal water pollution control litigation, distributed by the Department of Justice.

These quidelines set forth the regulations under which all U.S. attorneys serve throughout the country.

I might add that I have two of my assistant U.S. attorneys here: Assistant U.S. Attorney Robert Reynolds and Assistant U.S. Attorney David McIntosh, who are two of the attorneys that handle environmental litigation in my office.

With regard to the turnover problem, Assistant U.S. Attorney Kenneth Ortell, who was one of my environmental men, left 6 months ago to become general counsel for the Governor in the cabinet of Florida, of the Internal Improvement Board—the I.I. Board—which I'm sure you gentlemen have heard some testimony about.

Our other assistant U.S. attorney, who served up until 6 months ago, was taken from us by the Justice Department, and put into their Civil Division.

So, the two gentlemen here, who serve in the pollution field, have been assigned that area since about 6 months ago, and took over the cases from the previous two assistant U.S. attorneys.

Section 10 violations and direct referral cases. There has been some delay in the filing of civil and criminal matters by my office due to the Corps of Engineers' referral policy. At the present time the Corps of Engineers does not refer these cases to us directly, but refers them via its general counsel's office to the Department of Justice in Washington. I understand that the corps is considering a change in its procedure.

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I also understand that the Department of Justice has no objections to the direct referral of section 10 cases and will change its procedures at such time as the Corps of Engineers alters its regulations.

As a matter of fact, the Corps of Engineers and the Department of Justice have in some instances by telephone authorized immediate, direct referrals where a situation seemed to require—in the opinion of the corps district office in Jacksonville—immediate action.

Thank you, gentlemen, for the opportunity to appear here.

[Mr. Rust's prepared statement and the attachments thereto—with the exception of the privileged data—are printed in app. 8, pp. 2201–2210 of these hearings.]

Mr. FASCELL. Thank you very much, Mr. Rust.

Our next witness is Mr. Robert Bacon, Director of the Office of Aviation Policy and Plans, Federal Aviation Administration.

Mr. Bacon.

STATEMENT OF ROBERT F. BACON, DIRECTOR, OFFICE OF AVIATION POLICY AND PLANS, FEDERAL AVIATION ADMINISTRATION

Mr. BACON. Thank you, Mr. Fascell. My name is Robert F. Bacon. I am Director of Office of Aviation Policy and Plans, Federal Aviation Agency.

I very much appreciate the opportunity to appear before you today to discuss the environmental problems of the Florida area and, in particular, the Dade-Collier Training and Transition Airport.

My statement has been submitted to you along with supplemental material. I'd like to summarize it for you by briefly giving you the background of the existence of the airport in question, its current status, and giving you the outlook as the Federal Aviation Administration sees the future.

The Training and Transition Airport was constructed in late 1968, and finished in 1969 as a single runway airport. It straddles the Dade County line some 40 miles west of the Miami area. It encompasses about 39 square miles in size.

As this became operational, there was a growing national environmental concern from many sources. That resulted in the Federal Government taking action to institute a jetport pact which represents an agreement executed in January of 1970, signed by the Secretary of the Interior and Secretary of Transportation on behalf of the Federal Government; by the Governor on behalf of the State of Florida; and by Dade County.

The pact was to be in effect for a 3-year period. It has since been extended for 2 more years and is now a 5-year contractual agreement. That agreement had some basic points to it.

First, it prohibited any further development of the existing transition and training airport as then under construction; in other words, beyond a single runway status.

Second, it required the diligent effort on the part of Dade County with Federal support to find a replacement site which would be acquired and developed to a comparable state for training at no cost to Dade County.

Third, it permitted continuation of use of the transitional airport for the purpose of pilot proficiency training and transition from one

type of aircraft to another; all subject to a very stringent and continuing monitoring program of activity at that site to detect, if possible, any significant effect on the environment.

Fourth, it provided eventually for the closing of that facility in its entirety under two conditions; if at any time the monitoring would identify any significant adverse effect on the environment, the training and transition facility would be closed without further question; and, of course, completely closing the facility when a replacement site at the agreed upon location had been comparably developed and prepared.

With respect to the current status, 2 years of study have resulted in a recommendation made to Dade County concerning a replacement site. Dade County to date has not yet accepted that recommendation, but it has directed the county manager to review the study in question and determine two basic problems: one, whether or not there is in fact a need for another airport in the south Florida area, and if found that there is a need, whether Dade County should be the host county for the airport.

Meanwhile, the airport is being used. In the past 12 months, it was being used to the extent of about 90,000 operations per year. This is about one-third the operational level that was forecast in the late 1960's as a need for a training facility in the south Florida area.

After 2 years' use, the monitoring has proceeded in 2 directions: one, by the Department of the Interior; the other being an occasional monitoring by the University of Miami on behalf of Dade County. It has failed to detect any significant environmental impact on the use of the facility.

We expect that Dade County will be making this determination within the next 2 or 3 weeks. That's not a commitment on their part. As far as we know, that's the state of their progress.

Should Dade County approve the site, the Federal Government is prepared to pursue with all the necessary steps to follow its commitments. To repeat those commitments, the Federal Government will acquire, at no cost to Dade County, the replacement site that is selected. It would develop it to the comparable state of the existing training airport—that is, a full instrument, single runway operation; and deed that property to Dade County for the exchange of the property at the existing T. and T. Airport, which Dade County had acquired and invested their funds in.

I would like to add one thought in terms of the national environmental concerns of FAA: I think we have learned, possibly the hard way, gentlemen, that the planning of airports throughout the Nation has become a contributing factor to the pollution throughout the Nation. As a result, we have been virtually forced by the enactment of the National Environmental Policy Act into a moratorium on airport development for approximately a 2-year period.

We feel we have used these 2 years wisely. We have undertaken significant technology, and program studies, in an attempt to eliminate aviation's two major bad names in the pollution field—aircraft noise and engine emissions.

With respect to aircraft noise, we feel we have orvercome the major obstacles. We feel from this day forward, the public can rely on improved progress toward a reduction in aircraft engine noise. We

honestly feel that the technology that has been developed from this point forward is really a matter of economics; that is, how soon the aviation industry, and the aviation users, can afford to convert to the less noisy aircraft.

We're aided in that fashion by a new generation of equipment that we hope will progress into our system.

With regard to air pollution, I can't be as positive as to our outlook. We are optimistic and we are making progress. However, air pollution is a much more complex problem.

In this area, we're working extensively with the Environmental Protection Agency on noise emission standards that are about to be evolved, and we're working closely with NASA on research aimed at minimizing aircraft-engine emissions.

That, gentlemen, is my quick summary. I'll be pleased to answer any questions.

[NOTE.—Materials submitted by the Federal Aviation Administration are printed in app. 5, pp. 1367–1499.]

Mr. FASCELL. Thank you very much, Mr. Bacon. This panel has cooperated beautifully. We certainly do appreciate it.

Ladies and gentlemen, we've been joined by two distinguished visitors; one is one of our county commissioners, Mr. Mike Calhoun, and the other is our distinguished colleague in the Congress, the Honorable Claude Pepper.

If you will permit, we'll defer questioning of this panel to allow Congressman Pepper to come up and make his statement.

We are very happy to have before us our distinguished colleague in the Congress, whom I've been very happy to work with for many years. He has been tireless, and has made many outstanding contributions to our congressional work, no matter what the issue is.

So this subcommittee is expecting the best. We know it will be from our distinguished colleague. He represents a major part of this whole area, and is very much involved and interested in all the problems that are before this subcommittee.

Mr. Pepper.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. Thank you, Mr. Chairman.

Members of the committee, my distinguished colleague is characteristically generous and kind in his gracious words of introduction; it is a great privilege to serve with him, and my other colleague, Mr. Lehman, whom I believe was with you this morning.

We are very grateful to your distinguished committee for coming down here to view our area, and to concern yourselves with our problems, to help us in our efforts to restore and preserve the blessings which nature has so bountifully bestowed upon this part of this county, this area, and through this area, the whole Nation.

We are not without our problems, as you have already learned, I am sure, from knowledgeable witnesses here, and you will learn further through your hearings here tomorrow. In respect to our own geological situation, you are aware of the fact that we are sitting on sort of limestone sponge saturated with fresh rain water, as in the

interior of the State; salt water beneath and salt water on the two sides of us—the Atlantic Ocean and the Gulf of Mexico.

We have, however, one of the greatest blessings possible—that is the Gulf Stream, the greatest river on our planet, which almost laves our shores from the Gulf of Mexico and the Atlantic side. The Gulf Stream is not only largely responsible for our climate—which we think is naturally desirable to the people of our country and the world—but it also has proven to be our best means of disposing of our waste.

There was a time when there was considerable doubt about it. I can well remember a few years ago appearing with one of our local groups before some authorities that had to do with the protection of the sanitary aspects of the Gulf Stream. And they were quite concerned about our dumping sewage or disposal waste into the Atlantic Ocean.

It was rather a close decision as to whether they would permit us to do so. The latest advice, as far as I'm advised from the Environmental Protection Agency, is that it is not objectionable for us to put such waste into the Gulf Stream, provided it is properly treated before it is put there.

However, there are undoubtedly problems about that. It must be properly treated and that takes money. It takes more money than we have at our local disposal. That is the reason we were so very much upset, so much shocked, when the administration, some time ago, held up more than half of the amount of money of the $25 billion that we had made available to the Environmental Protection Agency for the purification of our water—despite the fact that the Congress had overwhelmingly, by a bipartisan vote, overridden the Presidential veto.

We are very hopeful that the Supreme Court will sustain the circuit court, in holding that there was no constitutional authority for the Executive to hold out such funds after the Congress had clearly expressed its will and wish that that was a priority relative to the safety and the well-being of our people.

If the Supreme Court doesn't do it, then I'm hopeful that we are going to be successful in the efforts that we're making in the Congress to restore to the Congress the constitutional prerogative of being the only legislative body in the Government of the United States.

And I think surely our people must all agree that when priorities are to be determined, and when policies are to be fixed, they should be fixed by the Congress which is the representative of the people, and knows what the people would like to have done legislatively by the Federal Government. And I am sure we are going to be supported by the people in the fight that we are making for the restoration of that prerogative that the Constitution so clearly bestowed on the Congress when it said, "all"—not part, but "all"—legislative power shall be vested in the Congress, and that the Executive—and I am quoting the language of the Constitution if you recall—"shall take care that the laws be faithfully executed."

These laws the President has not executed were the laws of the land, despite the constitutional mandate that the Executive was to take care that they be faithfully executed.

We hope that the Executive will carry out that constitutional mandate in the days that are ahead.

So we have the very large problem of the disposal of the waste, which arises from a population of about 1⅓ million people living in Dade County—a large county territorially, the needs of which are extensive. So one of our great problems is to get the financial assistance that we will have to have from Federal and State governments to assist us in necessary measures to preserve the purity of our water supply, to dispose of the wastes from our community, and to preserve the purity of the resources that we have of that character here.

In addition to that, we have our streams. Most of our streams are slow and sluggish and shallow. They don't remove the waste as a fast running stream would.

For example, we have the potentially beautiful Miami River here. Personally, I'd like to see it like the great Rio de Prado in San Antonio, Tex., where you can ride along in a lovely craft and music will be played and delightful meals will be served, and pleasure would be enjoyed by those who were permitted to traverse that waterway, between scenes of beauty on each side of it—of course, not interfering here with the large commercial use that is made of the river.

Perhaps you have already heard our secretary of state, Richard Stone. My distinguished colleague, Mr. Fascell, and I and Mr. Lehman have been working with the secretary of state to try to preserve the water in a purer state in the Miami River. We got through Congress last year authority for the Army Engineers to make a study of that river, and now, we have applied for the $30,000 that would be necessary for that study to be made by the Corps of Engineers, and we've appeared before the Appropriations Subcommittee of the House and asked for that appropriation.

That is necessary to remove the sludge from the bottom of the stream, where it is now, and pollutes the stream. We have already had an increasing purity in the river by what has been done by local authorities, who have been very cooperative in their participation here.

In addition to that, we've got our beautiful Biscayne Bay here, a lovely site, so much enjoyed by our people. But it generally is not desirable for purposes of swimming. Of course, it is not palatable water. It needs to be cleaned up.

We need to take necessary steps to prevent pollution of that beautiful waterway. We have here our great Everglades area, just behind us, and there the State of Florida—as you no doubt are aware—is putting up $40 million to advance the purchase of some of the land out in the Everglades, the Big Cypress Swamp area, so that we might begin to acquire and preserve that unique beauty in its natural state in the years ahead, and protect the water supply of the Everglades National Park as well.

The level of water in the Everglades has a direct relationship to the level of salt water in our Miami area. That is very important to us.

We are struggling to have a jetport somewhere within this area that will serve the economy of this populous area which is visited by so many millions of people every year. It is necessary for the economic advantage of this area that we have such a jetport; yet we have the problem of not adversely affecting the environment.

Perhaps that is another instance—of which so many are beginning to appear now—where we will have to weigh one interest against the other. We can't have everything that we would like in every area; we will have to determine our preferences.

I am sure that we are trying diligently to find an area where the jetport may be built which will permit its construction and not materially adversely affect the environmental area around about there.

We have very many other problems here, Mr. Chairman, which you have no doubt heard; but preserving the purity of our water is our most important one. Many years ago, I heard a water engineer speaking before a club in this State—in Tallahassee—say that we had a fresh water supply in Florida sufficient to support 10 million people. Well, we have over 7 million now.

New people are coming to Florida at the rate of 2,500 a week; so it's not going to be very long before we're going to reach that 10 million. You can see how essential it is for us to be able to have the fresh water in the State that's essential to the advancement and enjoyment of our area by our population.

Your role is immeasurably important. I know from my friendship with all the members of this distinguished committee how dedicated you are to the preservation of our natural resources. We are thankful to you for coming, and we know it's going to be very meaningful to us what you do here and what you recommend after your departure, which we hope will not be too soon.

Thank you very much.

[Mr. Pepper's prepared statement follows:]

PREPARED STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I wish to congratulate you and the members of this distinguished subcommittee for conducting these hearings here in Miami and elsewhere in an effort to determine how the agencies of the Federal Government are fulfilling their responsibilities for the preservation of the environment.

We are acutely aware here in the Miami area of the need to take effective action to prevent further degradation of our environement, and particularly of our water resources.

I have been concerned with this problem for a very long time. I took the lead in bringing before Federal water quality people many years ago the peculiar problems we face in this area with respect to the disposal of wastes in such a way as to protect our resources of fresh water.

As you may know, we sit here atop a great limestone sponge which has been saturated with fresh water from rainfall here and in the interior of the State, but which overlays a layer of salt water and which is bordered by salt water in the Atlantic Ocean to the east and the Gulf of Mexico to the west. We must be deeply concerned with the protection of this vital water resource to see that it is not polluted or so depleted as to permit the intrusion of salt water from adjoining and subterranean sources.

Our South Florida waterways are sluggish streams and canals which do not lend themselves to the dumping of wastes however great the degree of sewage treatment. We are fortunate, therefore, that the greatest river on this planet—the mighty Gulf Stream—flows only a few miles from our shores.

We recognize that even the Gulf Stream cannot be used for indiscriminate dumping of wastes. Treatment is necessary if we are to continue to use this great waterway without polluting it and the ocean sea which ultimately sustains all human life.

I recognized many years ago, however, that the Gulf Stream offered us a means of disposing of our wastes through properly constructed outfalls, at least on an interim basis, and I was pleased to bring our case before the first water quality control agency established by the Congress to begin to apply national standards to our water purity problems.

We received the necessary permission to proceed in this direction at that time and I am pleased to see that the latest environmental studies of the Environmental Protection Agency confirm that the use of outfalls with appropriate treatment are the best way to dispose of sewage in our area for the immediate future.

I emphasize this history to make it clear that we in the Miami area have not come lately to consideration of alternative or innovative ways of disposing of sewage which would reduce the adverse impact upon the environment. We are concerned with finding ways of dealing with the pollution problem in ways which will permit the continued growth of our area.

I believe we can find a common ground between growth and environmental protection. But to do this we must have the timely application of the financial resources necessary to provide adequate water and sewer facilities.

Our people were strongly supportive, therefore, of the efforts of the Congress to provide a water pollution control program which would be adequate to meet the pressing problem of matching our environmental imperatives with our continuing growth needs. It was a shock, then, to have the President order the Environmental Protection Agency to withhold more than half of the $25 billion which we authorized in the 1972 act for a three-year program of water and sewer construction aimed at making a real impact on the water pollution problem in this country.

This decision, taken after the Congress had approved this legislation over his veto, was a thoroughly unconstitutional exercise of presidential power and I am hopeful that the Supreme Court ultimately will uphold lower court decisions ruling that EPA must disburse these funds to the States and localities in accordance with them andate of the Congress.

The gravest environmental question in our area is the provision of adequate means of treating and disposing of wastes that could destroy our water resources. I urge your subcommittee to give urgent attention to this problem and to the way in which the executive agencies are fulfilling or failing in their responsibilities to implement the mandates of the Congress that we restore our waterways and water resources to the purity and safety which is necessary for us and for future generations.

Mr. FASCELL. May I thank my colleagues for that very fine summary statement, and say that I certainly agree with him in his interpretation on the impoundment issue. I do not think there's any question about that interpretation, and I join him in whatever effort is necessary and will be undertaken to turn that around in the Congress.

It certainly is quite clear, it seems to me, from testimony we will hear today, and we will continue to hear, that one of the highest priorities in the country for the expenditure of funds would be in the area that we're talking about—the quality of water and the disposal of sewage.

Other than life or death, and maybe education, I can't think of a higher priority.

Mr. PEPPER. I believe my colleague will correct me if I'm in error. I think we have 20 or 30 million people a year coming here, so we are serving not only our own local indigenous population, but many other of our fellow Americans as well.

Mr. FASCELL. Thank you very much, Claude. We appreciate your appearance.

If my colleagues have any questions before our colleague leaves, now is the time.

Mr. REUSS. Nothing other than to thank this most knowledgeable, amiable, and dedicated of colleagues for his lesson in constitutional law, geography, and ecology.

Mr. PEPPER. Thank you very much, Mr. Chairman. Thank you very much. I appreciate very much the kindness of those who have permitted me to come in this afternoon.

Mr. FASCELL. Now, if we could have our U.S. attorney back at the table.

STATEMENT OF REAR ADM. WILLIAM M. BENKERT, COL. EMMETT C. LEE; JUNE WHELAN; ROBERT W. RUST; AND ROBERT BACON—Resumed

Mr. FASCELL. Mr. Chairman?

Mr. REUSS. Thank you. Mr. Rust, I want to congratulate you, as I do the other witnesses, on your fine statement—particularly on the budget of your office and on your energetic approach to the environmental crisis and the legal aspects relating to it.

Mr. RUST. Thank you, sir. You're very kind.

Mr. REUSS. Let me say that I don't agree with very much that this administration does, but I've always been behind President Nixon in his desire to decentralize Government—to get things out of Washington, get it out to the people. "Power to the people," as he puts it.

Accordingly, I was deeply distressed by your statement on page 2, and I'll quote:

> * * * all U.S. Attorney Offices throughout the country are under the direct budgetary control of the Executive Office for United States Attorneys, located at the Department of Justice, Washington, D.C. United States Attorneys are directed to make application in writing for prior approval for all expenditures over $25. All such requests are approved or disapproved on an individual basis by the Executive Office for United States Attorneys on a day-to-day basis.

Mr. FASCELL. Let the record note that our U.S. attorney doesn't have grey hair yet.

Mr. RUST. That is correct.

Mr. REUSS. I hope you will not think of me as a wild radical if I say in my judgment decentralization could perhaps encompass $50.

[Laughter.]

Mr. RUST. Maybe they don't trust us.

Mr. REUSS. Seriously, you have to have a big office. You have 24 attorneys. You have a total staff of more than 50 people. You handle not only vital environmental work, but the grist of the Federal criminal law, including an unfortunately large drug litigation.

Mr. RUST. That's correct.

Mr. REUSS. Suppose, by dint of skill and energy and expertise, you are able to break, let's say, the Nation's biggest drug ring, and need to Xerox the papers you found in their lair; but you're out of Xerox paper, and a new supply will cost you $26. Do you mean that you have to hold up the process of law enforcement until your staff can make application in writing for prior approval to the Department of Justice, Washington, D.C., and have that request approved or disapproved on an individual basis by that office?

Mr. RUST. Congressman, I neglected to put one thing in there: They did give us a GSA credit card, and for matters like Xerox paper, pencils, things of that nature——

Mr. FASCELL. Paper clips and other essential items.

Mr. RUST. We can use the GSA credit card. In addition to that, there are some expenditures like grand jury court reporters. We do have to send the bills to Washington and they do have to approve their payment.

But we just go right ahead and spend the money in that type of area—litigation expense—and they go ahead and authorize all those expenditures. But other than litigation expense, we have to write up

there ahead of time—like to get a typewriter, or to hire additional personnel.

Mr. REUSS. What about travel?

Mr. RUST. Again, I neglected to cover travel, because I didn't cover the whole sphere. We have Government transportation requests, and they give us one or two books of those ahead of time.

When we need another one, we go ahead and order it. But we have had our travel cut down considerably from time to time, when, at the Washington level, it is determined that the appropriation for such is diminishing. And we then have what we call, for all intents and purposes, a local freeze in that area of spending, and we are notified by Washington. At which point, we have a difficult time figuring out how we're going to get where we're going to go.

Mr. REUSS. When I get back to Washington, I will take this matter up with the President and see if, consistent with avoiding profligacy, we can't raise that $25 allowance a little bit.

Mr. RUST. I would say in all honesty now that in the last 3 years—as against my earlier years in the Justice Department—we've had pretty good luck in getting approval in writing for necessary expenditures to get the job done. That's because you gentlemen have authorized the appropriation of the money, and I thank you.

Mr. REUSS. How long does it take to get a request approved for, let's say, a typewriter? Suppose it becomes apparent to you that your office badly needs a typewriter—that you can't get your work done without one. What do you do?

Mr. RUST. I was very wise and I estimated a long time ago how many assistants I would ultimately get them to give me. I put this request in writing, and as a result, I've managed to get the typewriters, and the dictating machines, before the new personnel came in. So I'd say I've had no problem getting this prior authority back in time for me to have the machinery to do the job.

The one area where I've had difficulty in getting these prior written requests approved is for the sending of assistant U.S. attorneys to training schools. In that area—and I would say that's the main area—I have not ever had one of those requests approved. In the other areas, this system that you see described there has not adversely affected the operation in my office, unless they run into one of these freeze problems. Then it does get a little touchy.

I hope I've answered fully.

Mr. REUSS. You have done very well. Thank you.

[NOTE.—By letter of June 12, 1973, Mr. Reuss wrote to Attorney General Elliot L. Richardson concerning the questions he discussed with Mr. Rust above. That letter and the August 7, 1973, reply from Mr. Philip H. Modlin, Director, Executive Office for United States Attorneys, follow:]

CONGRESS OF THE UNITED STATES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 12, 1973.

Hon. ELLIOT L. RICHARDSON,
U.S. Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. RICHARDSON: On May 25 and 26, 1973, our subcommittee held hearings in Miami, Florida, on environmental problems in Florida. The U.S. Attorney for the Southern District of Florida, Mr. Rust, testified at these hearings in response to a number of questions which we raised prior to the hearings,

concerning the adequacy of enforcement efforts. He was cooperative and his responses were quite helpful. But there are two matters which I think should be brought to your attention.

I

Our subcommittee has for some time been concerned as to whether the U.S. Attorney's offices are adequately handling the increasing load of environmental cases, in addition to "other areas of responsibility." Mr. Rust testified that only three of his 23 Assistant U.S. Attorneys were assigned environmental cases, in addition to "other areas of responsibility." Mr. Rust stated that these three attorneys have been in his office for only a few months. When we asked why this is so, he cited two reasons. First, the salaries for senior attorneys "are not comparable to private practice," and second, that "there is no job security whatever—each assistant serves at the whim of each new administration." He said:

"I can personally attest to this from my experience as an assistant U.S. Attorney during the late 1950's and early 60's. I think that if we are to have the best possible professional operation—we will have to retain more Assistant U.S. Attorneys by making a career not only possible but attractive—if we do not, then U.S. Attorneys' offices will continue to offer young men and women an opportunity to gain a couple years experience, prior to their entry into private practice."

I share Mr. Rust's concern. This practice is clearly inefficient and uneconomical. By the time an assistant U.S. Attorney acquires proficiency, the reality of his limited tenure due to changes in administration impels him to move out. Even the most dedicated will not wait for the political ax to fall.

According to Mr. Rust, under the present procedure only the clerical and other non-attorney personnel provide continuity in the U.S. Attorney's office. While it may be appropriate to appoint a new U.S. Attorney with each change in administration, it is hardly in the public interest to apply this same procedure to assistant U.S. Attorneys as well.

I note that changes in administration do not ordinarily result in the wholesale sweeping out of attorneys in the various divisions of the Justice Department or in the General Counsels' offices of other Federal agencies. If it is possible for these offices to minimize the political patronage scramble, it should also be possible with respect to at least the Assistant U.S. Attorneys if the Justice Department, working with the Civil Service Commission, had a mind to do so.

I urge that you promptly take steps to establish a rule whereby qualified Assistant U.S. Attorneys are encouraged to remain in their posts regardless of which political party holds the Presidency. Such a rule is essential to insure that our environmental and other laws are efficiently and aqeduately enforced.

II

In response to the Subcommittee's questions about the adequacy of his budget, Mr. Rust informed us, to our vast astonishment, that "United States Attorneys are directed to make application [to Washington, D.C.] in writing for prior approval for all expenditures over $25.00," and that "*all* such requests are approved or disapproved on an *individual basis*." (Italic supplied.)

Such a limitation is patently absurd. This sort of penny-ante control of a U.S. Attorney's budget certainly does not accord with the President's position on decentralizing Federal Government operations.

We urge that you promptly review this unrealistic and inefficient bureaucratic limitation and either abandon it, or raise it substantially.

Sincerely,

HENRY S. REUSS, *Chairman.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 7, 1973.

Hon. HENRY S. REUSS,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. REUSS: I regret the serious oversight which caused the delay in responding to your letter of June 12, 1973.

Regarding Mr. Rust's testimony before your subcommittee, you will note that he prefaced his remarks with the comment that he was speaking from his experience as an Assistant U.S. Attorney in the late 1950's and 60's. I believe that much progress has been made in the last four years in alleviating precisely the problems to which Mr. Rust addressed himself.

A recent survey of Assistant U.S. Attorneys revealed the average length of service in the Department of Justice to be 35.74 months or nearly three years. The trend toward longer service has been increasing steadily. One factor behind this trend has been the higher salary level of Assistant U.S. Attorneys. In fiscal year 1973, the average salary of Assistant U.S. Attorneys reached $21,603—a level which I feel is competitive with other government offices. Further, I am pleased that in many of our offices the Assistant U.S. Attorneys are interested in making a career with the Department.

Mr. Rust's statement that all requests for expenditures over $25.00 must receive prior Departmental approval is no longer true. He was referring to a recently discarded provision of the U.S. Attorneys' authority which allowed them to purchase expendable supplies on an emergency basis up to $25.00 a day. Present policy grants the U.S. Attorney complete authority to order all office supplies. The only major areas of expenditure over which the Department retains control are personnel hiring, equipment purchases and long term rentals, inter-district travel, and the acquisition or alteration of office space.

Again, please accept my apologies for not responding to your first letter sooner. If you desire additional information, I shall be glad to supply it.

Sincerely,

PHILIP H. MODLIN, *Director,*
Executive Office for United States Attorney.

Mr. REUSS. Colonel Lee, I want to take up with you the problem that surfaced this morning concerning section 401 of the 1972 Federal Water Pollution Control Act amendments, which section says in essence, as applied to Florida, that the Corps of Engineers shall not issue a permit for dredge and fill or construction operations which may result in a discharge into navigable waters, without obtaining certification from the Florida Pollution Congrol Agency that the action will not be damaging to those waters.

You have no doubt about the existence of that section of the law, do you? Were you here when Mr. Baljet was testifying?

Colonel LEE. No; I was not.

Mr. REUSS. Let me summarize what he said. He said that there had been a number of cases involving violation of that requirement by the Corps of Engineers. And it got so bad that early this May—on May 3—his department, after making several phone calls, wrote a letter to the Jacksonville office of the Corps of Engineers asking that it enforce that section of the law, and not issue permits until the Florida Pollution Control Board issued a certification that it was all right to do so.

Nevertheless, thereafter—specifically on May 8, 1973—the Corps proceeded to issue permit 72–1300 to a Mr. Dan B. Cooper, who is vice president of ITT Development Corp., for some waterway activity that he had applied for up in Flagler County, Fla.

That was simply one case that was quite carefully documented. What about that? Is it so? Can you explain it?

Colonel LEE. Mr. Congressman, section 401 of the Federal Water Pollution Control Act requires that the applicant for a Federal permit to conduct any activity that may result in discharge in navigable waters receive certification from the State pollution control board—in this case in the State of Florida—that is, certification is required only when there will be a discharge into navigable waters. We issue permits, or consider permits, for such items as navigation aids, for small piers and docks, for any number of things for which certification under the law is not required.

I think the record will show—on examination of any number of permits that anyone can examine in our office—that, if there is any

question in our mind, we require certification, In this case, I was not here during testimony this morning.

This specific permit that you refer to was mentioned to me by one of my staff who was there—and this is a sketchy explanation. We will follow this up with a letter for the record. We called back to Jacksonville. That permit was issued to the gentlemen in question with a certification by him that all work would be above the mean high water line.

He came to us, as I understand it—and I don't have the record before me—and asked if a permit were required if he certified that all work be above the mean high water line. My people told him for his own protection—and in case it did cross some small area of water that might be construed as below mean high water—he should have a permit. The impact on the waterway was such that no certification by the State pollution control board was thought to be required at that time.

Mr. REUSS. If it's above the mean high water mark, he doesn't need any permit, does he?

Colonel LEE. That's correct.

Mr. REUSS. I hand you a document purporting to be a permit issued on May 8, 1973, to Mr. Dan B. Cooper. Flagler Beach, to construct a bulkhead in said waterway, and ask you to point out to me where it says anything about the mean high water mark.

[The permit referred to is printed at p. 150.]

Colonel LEE. It wouldn't say on here. I can tell you that.

Again, this is based on a quick phone call, and I will supplement the record on this. With regard to the permit in question, I was informed that the applicant said, "Do I need a permit in this case if I certify that the work is above the mean high water line?" It was in fact just about at the mean high water line. He was advised by my people that he should get a permit for his own protection—nothing more—in case there was a small area of a couple of feet that could be construed as being below the mean high water line.

The permit application was routinely circulated, and it was felt that there was no requirement for certification since there was no discharge into the navigable water at all.

Mr. REUSS. Don't you think it's rather unbusinesslike to issue permits which in fact relate only to activity above the mean high water mark—activity so innocuous that a permit is not required for it—without any statement in the permit which excludes activity below the mean high water mark?

Colonel LEE. In this particular case, Mr. Reuss, I would say that the construction was as you might say at the mean high water mark; he would have certified that it was above the mean high water mark. It was so marginal that my people, in their judgment, suggested to him that he go ahead and submit his permit application.

Mr. REUSS. There was evidence introduced this morning by the State department of pollution control in their letter to the Jacksonville division, U.S. Army Corps of Engineers, dated May 3, 1973, which said, and I quote: "* * * we request that you not issue Corps permits without actually having received the appropriate certification from this Department as required by Public Law 92–500."

Mr. Baljet further testified that had this matter been presented to the Florida Department of Pollution Control, it would not have

issued a certificate, because it did not approve of the application—even accepting the fact that the corps regarded this application as innocuous and applicable only to activities above mean high water marks. When the State agency repeatedly makes it clear—in writing and orally—that it would like the opportunity to comment on applications which may require the issuance of a permit; and particularly in cases where the State repeatedly indicates that were they given the opportunity to comment they would not agree to the permit: Wouldn't it be a good idea to include the State and get their comments—positive or negative—before proceeding to the issuance of a permit?

Colonel LEE. I would like to explore this particular case more, Mr. Reuss, before I make a more definitive response to the question. It only came to my attention shortly before lunch.

I am reasonably sure that the public notices are routinely distributed to the Florida Pollution Control Board, but it's a question of law. The law requires when there is a discharge into navigable waters that it be certified by us. For those circumstances where there's no discharge into the navigable waters, it seems that the certification is not required by law.

Mr. REUSS. The building of a bulkhead resulting in the fill—which is why you people build a bulkhead in the first place—can result in a discharge into the canal system and into navigable waters in a moist area like this, can it not? I've seen it. I'm sure it's so.

Colonel LEE. Yes, sir.

Mr. REUSS. It seems that the law is pretty clear. The law says that before you grant a permit, you must give the State people a chance to express themselves. It seems to me that you shouldn't need time to think that one over.

The corps, consistent with its new, environmental outlook, ought to be very happy to work with the State on that.

Colonel LEE. As I mentioned, Mr. Reuss, distribution of the public notice on all these permits is extremely wide. There's no reluctance on our part to deny them to anybody, and there's no effort on our part to deny to anybody comments on our permit. We go to extremes for comments—State, local agencies.

Mr. REUSS. Here you issued the permit without——

Colonel LEE. In our judgment, certification was not required. I don't know if we had any objection to it previously.

Mr. REUSS. Why was it not required?

Colonel LEE. We thought there was no discharge into navigable waters in this case.

Mr. RYAN. Will the gentleman yield?

Mr. REUSS. Yes.

Mr. RYAN. You are saying "our judgment," and that "we" decided. Who is ultimately responsible for such a decision?

Colonel LEE. In this particular case, the individual contacted was the chief of my permits branch in the Jacksonville District, who advised the applicant.

Mr. RYAN. Does he check with you?

Colonel LEE. No, sir.

Mr. RYAN. Is he the final authority on that matter?

Colonel LEE. No, sir; not always.

Mr. RYAN. I'm trying to assign responsibilities, since some important judgments have been made here on some matters that are controversial. I would just like to know, if it's a collective judgment, who the "we" involved are. And if it's not collective, who is the individual who has the final responsibility?

Colonel LEE. I'm ultimately responsible for everything in my district, but I have a staff. I have a permits branch. I have a chief of the operations division, who exercises his authority over the permits branch.

Mr. RYAN. Ordinarily, he just takes that authority and doesn't check with you, then?

Colonel LEE. That's not quite a correct statement, sir. He makes decisions which he feels are within the scope of his authority; and those that are not, he refers to the chief of the operations division.

Let me say that this year we will have processed some 1,500 permits. We have right now, I think—I checked yesterday—some 521 permits active in one stage or another.

In other words, we have received the application and we have not either denied or granted the permit. It's in coordination—either on public notice or somewhere else.

Mr. RYAN. I'm just trying to clarify this. In the end, you are responsible?

Colonel LEE. I am responsible, sir. I am saying if I had to consider every permit——

Mr. RYAN. That's understood; but if there's any question, presumably part of the responsibility is to determine what requires additional judgment on your part, rather than to issue permits routinely.

Mr. REUSS. I would just finish up by recapitulating my understanding of the situation. The Corps of Engineers apparently felt that it was not issuing a permit, even though it issued a document called a permit, because maybe it was not necessary—maybe it was all above the high water mark and, hence, not in the area where permits are required.

The corps also felt that this may not have been a discharge because it was indirect. But the bulkhead was built; the connection was made; the excess water intruded into the canal, and thus into navigable waters. In my book, that is a discharge.

At any rate, I'm quite ready to let the corps take a different view of it.

But doesn't the law require the Corps of Engineers to look at what the Florida Pollution Control Department thinks? And it's quite clear from the testimony of its director that the Florida pollution control people thought that a document issued by the Corps of Engineers—labeled "permit"—was a permit; and that a permit to build a bulkhead, which would permit a concurrent fill, which would extrude the water from that area into the canal and thus into navigable water, involved a discharge. Don't you think you should give them the benefit of the doubt, particularly when they read your letter about it and asked to be clued in?

Wouldn't it be a good idea in future cases precisely like this to wait a day or two and give them a chance to certify it?

Colonel LEE. We certainly attempt to do that, sir. We will attempt to do it in the future.

Mr. REUSS. Thank you.

Mr. FASCELL. May I interrupt, Mr. Chairman, to note the presence of a distinguished colleague who is in the audience, a former U.S. Senator, and now one of our very capable county commissioners.

The reason for the clarity of the air is because his ordinance makes it impossible to smoke in here. May I introduce U.S. Senator Harry Cain.

Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you very much, Mr. Chairman. Let me thank each witness for excellent statements, and for the thoroughness and completeness and cooperation with which you have responded to the inquiries of this committee.

Admiral Benkert, in your statement, you point out, quite properly, that the jurisdiction of the Coast Guard and the corps differ in scope and purpose. Could you tell me how they differ—with specific reference to the Refuse Act, for example?

Admiral BENKERT. I am not sure I understand your question.

Mr. VANDER JAGT. You mentioned that the Coast Guard uses the Refuse Act. What I really would like to know is in what way do you use it that the corps wouldn't?

Admiral BENKERT. I think that the corps—and I possibly should ask the corps for their thought on this—is particularly involved in the permit authority, which we have just talked about a moment ago, in granting permits for operations which will result in discharges into navigable waters; this is particularly within their purview because they have had the permit granting authority.

I think the Coast Guard's approach, to, shall we say, discharges into navigable water is primarily appropriate to vessels and not from shoreside installations—that is, discharges that result from the shoreside installations, sir.

Mr. VANDER JAGT. Thank you. That clears it up in my mind.

Colonel Lee, on the matter of the cease-and-desist order, the Interior Department has testified that quite often developers do not stop work immediately when the corps issues their cease-and-desist order. They go on developing. Has that been your observation? Has that been your experience?

Colonel LEE. It has happened. I wouldn't say it is a general rule. When a cease-and-desist order is issued by our office, it usually results in some immediate conferences between the developer and our office.

And I would say, as a general rule, the developer stops. I might call on Mr. Lankhorst, who can amplify on this concerning our association with the U.S. attorney, because there is a new policy on this matter that he would like to discuss.

Mr. LANKHORST. We recognize the need to avoid delay and we have expressed to this committee our intent to delegate direct referral authority when our regulations are out. It is now out for comment, and interim guidance.

We have had discussions with the Department of Justice, and, as of last Monday, we submitted to them proposed delegation of authority to U.S. attorneys for direct liaison.

Mr. VANDER JAGT. I congratulate you for that step, and thank you.

Colonel LEE. I would add, as well, even when we have been referring litigation reports to the Department of Justice, in cases where there is something that should be stopped immediately, we have been able to seek authority for clearing the matter directly to the U.S. attorney.

Mr. VANDER JAGT. Ms. Whelan, I understand that the Interior Department did not comment on EPA's impact statement. I have particular reference to ocean outfalls.

Can you tell me why there's no comment?

Ms. WHELAN. I did not know why the Department did not comment on the impact statement.

Mr. VANDER JAGT. Do you know what the Bureau of Sport Fisheries and Wildlife Service's views are on the adequacies of studies that have been done thus far to determine the effects of ocean outfalls on ocean resources?

Ms. WHELAN. May I refer that question to Mr. Carlson, the Regional Director of the Bureau of Sport Fisheries and Wildlife?

Mr. CARLSON. I'm C. Edward Carlson, Regional Director of the Bureau of Sport Fisheries and Wildlife headquartered in Atlanta, Ga.

Really, without trying to dodge the issue, this question is more appropriately referred to our friends in the National Marine Fisheries Services of the Department of Commerce, inasmuch as, under the recent reorganization, we no longer have direct responsibility for those resources.

Mr. VANDER JAGT. We have a representative coming up in the next panel, so if you people prefer to defer the answer, that would be acceptable to me.

Mr. CARLSON. Thank you.

Mr. VANDER JAGT. I suspect that the Department would have the same desire to defer on the question of deep well discharge, also. Is that more properly in your department?

Mr. CARLSON. We would defer there, also.

Mr. VANDER JAGT. Mr. Rust, I think you testified that until very recently the 1899 Refuse Act was an extremely useful weapon to you in terms of abating pollution and punishing polluters. Is that correct?

Mr. RUST. Yes, sir.

Mr. VANDER JAGT. Do you mean that the 1972 Federal Water Pollution Control Act amendments' provisions regarding discharges have rendered that act useless for you?

Mr. RUST. I don't know if I would say useless, but if they have an application for a permit pending, they can't go forward. I assume that it has not made it useless from an environmental viewpcint because the permit program makes the people get in line, and some of them will and some of them won't.

Mr. VANDER JAGT. In terms of your office and your responsibilities, the usefulness of that act has been severely impaired. Is that correct?

Mr. RUST. Yes, sir; to the extent that we do not get any litigation reports on that type of violation, because it is excluded by the amendment that you referred to.

Mr. VANDER JAGT. In a sense, if an application is pending, they have a free ride until 1975, as far as prosecution by your office is concerned.

Mr. RUST. Yes, sir; until that particular act is amended again.

Mr. VANDER JAGT. Thank you.

Mr. Bacon, you testified that in effect we have had a 2-year moratorium on the development of new airports.

Do you believe that that 2-year moratorium has been helpful to your agency in terms of trying to plan for the aviation needs of this Nation in a way that will be environmentally sound?

Mr. BACON. Very definitely, sir. I believe we have used those 2 years for the most part to reexamine contemplated projects that would have arisen within the purview of NEPA. I think we have evaluated these projects and have come to the conclusion that we simply cannot do some things any longer without taking certain preventive or minimizing measures. I think that as a result of this lesson, we are about to see constructive airport development commence at certain locations that will be environmentally compatible.

Mr. VANDER JAGT. Then the 2-year moratorium has been helpful?

Mr. BACON. Yes, it has. However, in rare cases, in larger metropolitan areas, it has posed some problems. But in the balance it has been helpful.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

Mr. FASCELL. Mr. Ryan?

Mr. RYAN. I would like to ask Colonel Lee a few questions that relate to a practice which in California is too prevalent and apparently is rather prevalent here.

It goes something like this: The developer buys land and begins immediately to develop the land in every way he can and as fast as he can. Then, he applies for a permit, et cetera; and later, if an objection is raised regarding the development, he argues that he has gone so far that there isn't anything he can do but complete it.

I have here some information I believe on the ITT matter, for example. It says that on May 20, 1973, the Miami Herald quoted a corps official as stating that to give a review of the permit to ITT now would be an unreasonable solution. The developer was going by the rules at the time the permits were issued.

Apparently there was some illegal action taken by ITT. This is not the only case. Interior said, according to the same report, that "* * * in many instances the corps elects to have the developers apply for after-the-fact or approval-of-plans permits rather that enforce the law or prosecute the offenders. This in effect tends to allow the developers and private citizens to circumvent the law rather than expose their projects to existing administrative review and control. This haphazard implementation of existing law and policy should be corrected nationwide at once."

If this is true, what is the corps doing now to correct the situation?

Colonel LEE. Mr. Ryan, at the time that the permits involving ITT were granted, the interpretation of the laws was such that we did not ask the developer to give detailed information to the corps relative to the upland development that might in some way be connected with the work involved in the permit. That is to say, in the case of ITT, their permit—which was processed in the normal way others were at that time—simply involved a tie-in into the intracoastal canal, a matter of a couple hundred feet.

A specific answer to your question, however, is that today we require the developer or the applicant for a permit to provide to the corps a complete indication or plan, or whatever it might be, of what upland development is planned that will tie it in to the permit itself. In other words, it is the relationship between what he intends

to do with the land that he is developing or the canals that he is tying into the national waterway.

Mr. RYAN. Do you believe that my conclusion is fair or correct or accurate—that there is a pattern of this kind of activity in relation to the development of land by developers, where they move in rapidly and attempt to get as far as they can as soon as they can before the question is raised about what they are doing?

Colonel LEE. There is no question that this has gone on in Florida, and I would say——

Mr. RYAN. Do you consider it to be a serious problem?

Colonel LEE. It is.

Mr. RYAN. Do you think it has a heavy relationship to the work of the corps or that the corps has any relationship to it where you could have some effect?

Colonel LEE. In the last few years, there has been a much greater degree of control brought to bear on just the type of thing that you are referring to. For instance, we had 600 permits 2 years ago. We will have 1,500 this year—indicating that developers are more careful about applying for permits. There have been some cases in litigation where the developer has been required to restore the area, and we have had some on a smaller scale where the developer has done so voluntarily.

Mr. RYAN. A pattern or an exception?

Colonel LEE. I would not care to comment whether there is a pattern. I would say that there have been some significant cases, and for the most part the large ones end up in litigation. So there has been, I think, some landmark litigation in that regard here in Florida; and there have been some cases where the U.S. attorney, in cooperation with my district, has effected an out-of-court settlement where the developer has agreed to restore some areas without going into litigation.

Mr. RYAN. Ms. Whelan, could you comment specifically on what the Colonel has said now; and could you comment on the statement made by officials in the Interior Department who said in their response to the subcommittee: "Further, in many instances the corps elects to have the developers apply for after-the-fact or approval-of-plans, permits rather than enforce the law or prosecute the offenders."

Can you say that the corps has been lax in enforcing the law or prosecuting the offenders?

Ms. WHELAN. Mr. Ryan, because our Bureau of Sport Fisheries and Wildlife makes recommendations on the permit applications, I would like them to comment on it.

Mr. RYAN. We will defer to them on that.

Mr. FASCELL. Mr. Carlson?

Mr. CARLSON. Yes, sir.

I would have to say in all sincerity that, on the basis of the experience we have had, there has been a laxness here that can be demonstrated in the record.

Mr. RYAN. Have you done any more about it to indicate that in writing? Have you contacted the U.S. attorney or taken any action to their superiors in Washington to try to get a better enforcement of the law?

Mr. CARLSON. Yes, sir, in several of these cases we have been in contact with the U.S. attorney.

Mr. RYAN. May I ask you, sir, Mr. U.S. Attorney, if you could enlighten us further on what action your office has taken?

Mr. RUST. My recollection is that we have received some 19 letters either from this gentleman or one of his people, wherein we get about a one- or two-sentence tip that there may be some type of environmental violation 10 miles up a certain river at a certain turn in the bend, and we get a carbon copy of this letter. The original is directed to the Corps of Engineers, asking the corps to investigate. We get an informational copy, at which point we have had some contact with the Corps of Engineers about these 19.

Mr. RYAN. Have you actually gone to court with any of them?

Mr. RUST. On these 19, I believe, we are still awaiting the litigation report, investigation report to be forwarded to us by the corps. Most of these would have come in during the last 30, 60, or 90 days. It seems to me that never before last December or January did we get copies of such letters from the Bureau of Sport Fisheries and Wildlife. Then all of a sudden we began to get them. That is my recollection.

Mr. RYAN. How long does it take from the time that there is some official comment made that there is a violation—or apparent violation—of the law regarding development of land before some kind of substantive action is taken?

Mr. RUST. It would vary in every individual case, depending on the complexity of the matter and based on the priority.

Mr. RYAN. Can you give me a maximum?

Mr. RUST. In some instances there might be an instantaneous reaction by the corps—that is, a full corps press—sending all of the people out on one case. In other instances, there might be a response; it might take 3, 6, 9 months, or 1 year.

Mr. RYAN. Suppose I am a developer, and I play it very carefully and get as far as I can before anybody gets alerted to it. Obviously, I am going to argue after I am caught that I have too much done; I cannot back out now, or the community cannot back out now. In other words, the action is far enough along that it cannot be stopped, which seems the apparent pattern here.

Ms. Whelan, are you satisfied with the time it takes now from the point where some action or development occurs until some kind of action is taken to stop, cease and desist, halt, whatever has taken place?

Ms. WHELAN. The Department of Interior is not satisfied with the time it takes the corps to notify the violator and stop the illegal activity. As I indicated in my statement, the procedures are not in existence for all the interested agencies to actually respond to the situation.

Mr. RYAN. Has the Department of the Interior made any specific recommendations regarding changes in the law and changes of procedure, and so on, that can be taken to improve that?

Ms. WHELAN. No; I do not believe so.

Mr. RYAN. Is there any intention to do so?

Ms. WHELAN. There has been discussion in the Department on this in terms of actual——

Colonel LEE. Mr. Ryan, I would like to clear up one thing. When I say that this is a problem from the standpoint of the developer getting so much done and then getting into the litigation process, this problem is generated by the fact that in most cases to which I referred, the work was probably done before the violation came to anybody's attention.

I can say categorically that when a violation is reported to us, either in writing or by telephone, from one of the Interior field offices, we investigate as fast as we can. I have a field office in Miami. I have one in Tampa. I have one in Clewiston. We have people in those offices that get to the site as soon as reasonably possible.

I would say as a general rule we would either conduct an investigation of our own with one of our own people within 3 days, or we would solicit help—which we frequently do—from field representatives from the Internal Improvement Board to investigate for us and report back. If there is an apparent violation, we issue a cease and desist order. If the developer does not cease and desist, we pursue it from there.

Mr. RYAN. Has any developer in Florida ever received any kind of substantial sanction against his actions as a result of what he did?

If the word got around, as I do not see it is now, to a guy—no matter how far he can get, no matter how many thousands, ten thousands of dollars, or millions perhaps are involved—that he was going to get socked pretty hard when he got caught, I have a hunch a lot of your enforcement problems, and that the letters you get from the U.S. attorney's office, would drop off substantially.

It sounds like a lot of guys are trying to sneak through the front door while you are watching the back door.

Colonel LEE. There are several cases that should get the word around—one involving a developer over on the west coast who was fined $150,000.

Mr. RYAN. What is the development? That $150,000 might be peanuts.

Colonel LEE. I would like to ask Mr. Lankhorst to comment on an important case that involves restoration.

Mr. RYAN. If I get fined $150,000 out of a $50 million investment, I would charge it off to customers later on and keep on going.

Mr. FASCELL. Mr. Lankhorst?

Mr. LANKHORST. The first case that comes to mind was a trailer court in southern Florida where the court ordered the removal of all fill on which this man had built his trailer court. Unfortunately, the circuit court has recently reversed that decision based on the ground that the corps should pass on his application for permit before the court would affirmatively require removal of the fill. So we now have to proceed with the consideration of the application.

Mr. RYAN. That one did not even work, did it? In other words, that particular construction is going to proceed, then, because the corps got there too late?

Mr. LANKHORST. No, sir. We still have the concurrent right to proceed with the criminal prosecution and obtain a preliminary injunction. He will not be allowed to continue.

The question is whether we should decide whether he should remove this 15 acres, I believe, of fill.

Mr. RYAN. I was looking for a case in which the developer has received some official, final healthy economic belt in the midsection so that those who are doing the same thing will say, "I do not think I want to get involved in that kind of thing anymore because it looks like they are going to get tough now." That would not stop me if I were a developer, because the other person did not win. He found a way out which is the reason the problem that has been mentioned here exists, it seems to me. It takes too long. There are too many steps

to go through. Consequently, while you are going through all these steps, the developers are going ahead.

And the court says, from what you say, that the Engineers are not going to say it soon enough. The developer got in there so he would be allowed to stay there.

Mr. LANKHORST. No, they have not ruled to that effect at all, sir. The court of appeals ruled that the corps must finally process this application for a permit before the U.S. district court can order removal. Should we deny the permit and require removal of the fill, then we can go back to court and get a court injunction requiring the removal of that fill.

Mr. RYAN. Do you have any clearer case than that or is that the only one, or is that typical?

Mr. LANKHORST. That was our prime case on the record. We recently won one in Maryland, where as a condition——

Mr. RYAN. I mean in Florida.

Mr. LANKHORST. We have very few precedents at this time. Our policy has changed within the last 5 years, getting us into this field, and cases take time, especially when they are on appeal. The precedents are all going in our favor.

Mr. RYAN. It is like the operation that is successful but the patient dies. It seems like there is a lot of development going on. You have been moving ahead very well; but by the time you get everything worked out, the land will be substantially developed and you would have made your point.

Mr. LANKHORST. I think you will find the Department of the Interior is frequently recommending that areas be restored. The judicial process takes time. As a pattern, it will be required that developers who proceed without a permit will not have their investment considered in the determination as to whether that work should be allowed.

Mr. RYAN. That is all I have, Mr. Chairman.

Mr. FASCELL. Mr. Gude?

Mr. GUDE. Colonel Lee, are you familiar with the Pensacola Harbor maintenance dredging project?

Colonel LEE. Sir, that is within the Mobile District of the Corps. I am not intimately familiar with it.

Mr. GUDE. None of your staff people, then, would know about this?

There was a million cubic yards of spoil dumped there, and you say that is in the Mobile District?

Colonel LEE. Correct.

Mr. GUDE. Is there somebody here from the Mobile District?

Colonel LEE. I had two gentlemen here from the Mobile District. They are primarily here from the regulatory aspect. I do not know if they can comment or not.

Mr. FASCELL. Would you identify yourself?

Mr. STEVENS. My name is Francis F. Stevens, Chief of Permit Branch, Mobile District.

Mr. GUDE. Are you familiar with this project?

Mr. STEVENS. Just a little bit. I might be able to answer questions if you state them.

Mr. GUDE. It involved the disposal of a million cubic yards of spoil in an open water area in the Pensacola Harbor. The Bureau of Sport

Fisheries and Wildlife objected to it, and an alternate upland site for disposal of the spoil was not utilized by the Corps.

I was wondering whether you could shed any light on what the reasoning was as to why the Corps went ahead and ignored the recommendation of Interior and followed this course.

Mr. STEVENS. The only thing I can say to that is that I believe the Bureau was against the open water disposal, but the only place for it was open water at that time to keep the channel open.

Mr. GUDE. That was the only alternative?

Mr. STEVENS. The State of Florida did state that during the dredging operation the turbidity was over what they allowed, so we put an $8,500 change order to put this discharge 3 feet from the bottom rather than over the top. We did that to correct the turbidity.

Mr. GUDE. Did that meet their objections? Did they withdraw their objections?

Mr. STEVENS. They never did notify us at that time.

Mr. GUDE. Ms. Whelan, are you familiar with this project?

I wonder if Mr. Carlson——

Mr. CARLSON. Yes, sir. I would like to comment on that.

Under the date of May 16, we did object to the open water spoiling.

Mr. GUDE. What was the basis of that objection and what type of damage would be done by that spoil?

Mr. CARLSON. The basis of the objection was that there was an alternate site available for the spoil disposal. The open water spoilage adds to the turbidity of the water and also covers the organisms that are important in the food chain—the higher trophic levels of the biota.

Mr. FASCELL. Would my colleague from Maryland yield?

If there are no other questions for Mr. Bacon of FAA, we would like to give him the opportunity to retire.

Mr. BACON. Thank you very much, gentlemen.

Mr. FASCELL. We might submit some additional questions to you.

Mr. GUDE. That seems to be a considerable amount of spoil, and I was wondering what type of fisheries are involved—sport fisheries, commercial fisheries.

Mr. CARLSON. There are both sport and commercial fishery species in the area. I, off the top of my head, would be unable to list them. I have with me Mr. Dick Huber, who has been on the site and is in a position to give a list—or at least an indication—of the commercial and the sport species that are important in this area, should you like to have that, Mr. Gude.

Mr. GUDE. I would like to have that, but just before you give up the microphone: you say that there was an alternate site available at the time for the spoil.

Mr. CARLSON. It is my understanding that the Port Authority had some 500 acres that could have been used for this purpose.

Mr. GUDE. Thank you. I wonder if you could yield to the gentleman there.

Mr. CARLSON. This is Mr. Huber, who is a member of our Regional River Basin Division.

Mr. FASCELL. Would you give your full name, Mr. Huber, please?

Mr. HUBER. My name is Richard Huber. I am in the Division of River Basin Studies of the Bureau of Sport Fisheries and Wildlife in Atlanta, Ga. Without going through it, we could give you a list at a later date of the fish that are actually found in the area.

Mr. FASCELL. Would you supply it for the record, please?

[NOTE.—Subsequently, the Interior Department transmitted to the subcommittee a list of 187 fish species indigenous to the Pensacola, Fla., harbor area. The list is in the subcommittee files. The prefatory statement follows:]

The attached listing of 182 fish species indigenous to the Pensacola, Fla., harbor area is provided in response to a question directed to Mr. Richard Huber of the Bureau of Sport Fisheries and Wildlife on May 25, 1973, during the subcommittee hearings held in Miami, Fla. This listing is scheduled to be published in the following paper: Cooley, Nelson R. (in press). "An inventory of the estuarine fauna in the vicinity of Pensacola, Fla." Florida Department of Natural Resources Marine Resources Lab, Prof. paper series.

In addition to the above referenced listing, five fish species * * * were caught and identified during a menhaden study conducted in the Pensacola Estuary. This information is contained in the following unpublished paper: Tagatz, Marlin E. and E. Peter H. Wilkens (in press). "Seasonal occurrence of young Gulf menhaden and other fishes in a northwestern Florida estuary." National Marine Fisheries Service, Spec. Sci. Rep.—Fisheries.

Mr. GUDE. You were actually on the site.

Mr. HUBER. Per se, no, sir. Our field biologist—I have been in the area in Pensacola Harbor before as a field investigator. This was conducted by our field office. Their report was transmitted to the regional office for finalization.

Mr. GUDE. Did their report include the damages that were done by the disposal of this spoil into the area?

Mr. HUBER. Our original comments were sent on April 9, 1973, to the district engineer at Mobile, Ala., at which time we recommended that—excuse me, sir: Our original comments were on March 7, 1973, at which time we recommended that any conditions to protect water quality, marine resources, which were recommended by EPA be followed; and we further recommended that diked spoil areas not be constructed on any wetland areas.

Subsequently, on April 9, we submitted a telegram to the Mobile District Engineer, at which time we stated.

"We understand the project construction has been initiated, and potentia ly polluted soil materials are being placed directly in the bay, contrary to the recommendations of this Bureau and the Environmental Protection Agency."

We further stated:

We do not understand why the project plans were not modified in accordance with the recommendations presented in our March 7 letter. Therefore, the Bureau of Sport Fisheries and Widlife recommends that the project plans be immediately modified to incorporate the recommendations presented in our March 7 letter to protect the fish and wildlife resources, or maintenance dredging operations be stopped and the matter be referred to the Chief of Engineer's office for resolution.

We subsequently followed up this with a May 16, 1973, letter.

Mr. GUDE. Did you get a response?

Mr. HUBER. We got a response to that. We got a telegram back from the district engineer. This was dated April 10, and was in response to our April 9 telegram. It essentially stated that the project was near completion at that time.

Mr. GUDE. In other words, they were just going ahead.

Mr. HUBER. Yes, sir.

As I stated, no upland areas are currently available for disposition of this material, and they were continuing on with the project; yes, sir.

Mr. GUDE. Was this because they had not bought the explored area?

I wonder if the gentlemen of the Mobile office, or anyone else, could give us some clarification. There seems to be some doubt about whether there was an upland area available to them for the disposition of the spoil.

Mr. LANKHORST. Sir, we thought that most of this hearing would be directed toward our regulatory program activities, and we have a permit man from Mobile. What we are discussing here is the corps' own dredging projects, and we would like to supplement the record by getting a complete report.

I would like to point out, however, that concurrently, since April 23, we are in a new ball game. That is since the ocean dumping law went into effect, and we are now coordinating disposal sites with the EPA, and they have the power to veto that. I know as a general practice we try to coordinate with the Fish and Wildlife Service people. I do not know whether we are talking about a situation where we had no alternatives, what the district engineer had to decide, so I would like to get a report from him to satisfy your questions.

At this point, there is no one here with detailed information.

Mr. GUDE. Thank you, Mr. Chairman.

I would like to direct one question to Ms. Whelan, or someone on the Bureau of Sport Fisheries staff, in regard to any projects where there has been dredging which has brought about deleterious saline intrusion into fresh water areas. I am speaking of projects where there have been permit violations, and dredging has opened fresh water canals to saline intrusion.

Mr. CARLSON. Mr. Gude, I do not believe that off the top of my head I can recall a problem in this area. We would be pleased, however, to review the situation, and, if there are such examples, submit them for the record, if this meets your approval.

Mr. GUDE. Thank you, Mr. Chairman.

The remark was made about this being a new ball game. I thought the referral of these projects to the Bureau of Sport Fisheries and EPA was a fairly well worked out system, but it seems to me we have to start a new ball game every year. Thank you very much.

Mr. FASCELL. I would like to inquire. I am likewise concerned about the equal application of the law. Those who are familiar with the cases that I have been concerned about know exactly what I mean. Mr. Carlson, are you the attorney for the Bureau of Sport Fisheries at the regional level?

Mr. CARLSON. No, sir; I am the regional director of the Bureau. I have no legal background whatsoever.

Mr. FASCELL. Do you have any legal representation at the regional level?

Mr. CARLSON. We are just now, I am pleased to say, getting legal advice at the regional level.

Mr. FASCELL. "Just now." That means yesterday? Today?

Mr. CARLSON. I think he is reporting next month. Mr. Ray Coulter. He is here in the room, sir.

Mr. FASCELL. That means heretofore, with regard to all matters for which the Bureau of Sport Fisheries had input for enforcement of the law, you had no legal advice at the regional office.

Mr. CARLSON. No, sir; not the regional office.

Mr. FASCELL. At what point does the Bureau of Sport Fisheries have an input as to prosecution under the law?

Mr. CARLSON. We can only recommend, sir, and——

Mr. FASCELL. Do you recommend at the regional level? That is the point. If a case arises in Florida and comes across your desk, do you recommend prosecution?

Mr. CARLSON. We call——

Mr. FASCELL. You are getting a lot of credit for a lot of cases. I just want you to know that.

Mr. CARLSON. We are well aware of this, sir. We call apparent violations to the attention of the corps district engineer, and we supply copies to the U.S. attorney and——

Mr. FASCELL. That is what Mr. Rust was testifying about.

Mr. CARLSON. Yes, sir.

That is the extent of our authority.

Mr. FASCELL. Your region does not go to Washington for prosecution.

Mr. CARLSON. No, sir.

Mr. FASCELL. If the prosecution proceeds, it is because the corps directs the Department of Justice—or asks them—to proceed with prosecution.

Mr. CARLSON. That is correct.

Mr. FASCELL. If there is any failure along the line, it is not because of the Bureau of Sport Fisheries.

Mr. CARLSON. No, sir.

Mr. FASCELL. I just want to be sure because we have a clear case with respect to the Mobile matter where you made a direct statement with respect to the carrying out of your responsibility; but the corps itself cannot prosecute for violation of the law.

Mr. CARLSON. That is true.

Let me make it abundantly clear that under the Fish and Wildlife Coordination Act these permit activities or activities in navigable waters are referred to us for our comment and recommendation, but we have no final authority.

Mr. FASCELL. You have no control on anything that happens after that.

Mr. CARLSON. No, sir.

Mr. FASCELL. Your comment and your recommendations are always put in writing; are they not?

Mr. CARLSON. Yes, sir.

Mr. FASCELL. And they are submitted to the district engineer in every case that comes in your region?

Mr. CARLSON. Yes.

Mr. FASCELL. You are advisory to the U.S. attorney and the Washington office?

Mr. CARLSON. In many cases we are, and also to the State agencies; yes, sir.

Mr. FASCELL. You do not mean in many cases; you mean in all cases, do you not? or do you?

Mr. CARLSON. Well——

Mr. FASCELL. Now you are telling me about the funny way you let people know what is happening. In some cases you do, in some cases you do not. That is what you are telling me.

Mr. CARLSON. I am not sure I am following you exactly, but I beg a moment of consultation.

Mr. FASCELL. I am not trying to trap you.

Mr. CARLSON. I appreciate that fact.

Mr. FASCELL. Or be argumentative. I am just trying to get on the record what happens. As I understand it, in every case with the Bureau of Sport Fisheries, when they have some input in a case in your region, what happens is you are asked to comment, you comment in writing, you make your recommendation. It goes to the district engineer. You advise the U.S. attorney, and what else?

You also say you advise State agencies, and "in many cases" your headquarters office, which is what I did not understand.

Mr. CARLSON. Our central office. I would assume in cases that have the indications of having some greater significance—I am not prepared to state that in every case in which we comment on these permits do we routinely send copies to our Washington office.

Mr. FASCELL. When you determine at the regional level where there may be a major, significant case, you then advise the Washington office in your chain of command.

Mr. CARLSON. Yes, sir.

Mr. FASCELL. Was the Pensacola thing a major case?

Mr. CARLSON. Yes, sir, we thought it was a major case.

Mr. FASCELL. Did your Washington office know about it?

Mr. CARLSON. We also have with us Mr. Jerry Stegman of our Washington office who is Chief of our Division of River Basin Studies.

Are you prepared to answer that question?

Mr. FASCELL. All he has to do is tell us whether he knew about it or somebody above him knew about it. Yes or no.

Mr. STEGMAN. Yes; we were aware that this case was being considered by our regional people, and we were watching it very closely.

Mr. FASCELL. The memorandum of understanding of the Secretary of the Interior and Secretary of the Army, as applied to this operation by the corps, meant nothing?

Mr. STEGMAN. I think you are mixing together two types of projects.

Mr. FASCELL. Well, straighten me out.

Mr. STEGMAN. The type of project you are referring to is the Corps of Engineers maintenance project, which is not covered under the memorandum of understanding at this time.

Mr. FASCELL. Whether the Bureau of Sport Fisheries commented on it or had any reason to comment, it did not make any difference, did it?

Mr. STEGMAN. Not under the memorandum of understanding; that is correct.

Mr. FASCELL. Do I understand now that after April 23 we had some kind of environmental input in these kinds of projects, or do I misunderstand again?

Colonel LEE. Congressman, disposal areas in Jacksonville are routinely coordinated with all Federal agencies.

Mr. FASCELL. At the Washington level?

Colonel LEE. No, sir, at the regional level, and the field people.

Mr. FASCELL. As I understood Mr. Carlson, it did not make any difference anyway, because they did not have anything to say about this kind of project.

Colonel LEE. I do not know the situation in Mobile, but there are decisions that I think the district engineer has to make from time to time that are perhaps unpalatable to those people whose primary concern is fish and wildlife. That is, either you put the spoil in an area which may not be the very best area you would like to have, or you forgo the project by virtue of the fact that suitable spoil areas are not close enough. How far away are these upland spoil areas that were mentioned here?

Mr. FASCELL. I recognize what you are saying. I am not blaming you or the corps for this. It seems to me what we are saying is that we are applying one criterion for public projects and another criterion for private projects. I have constituents that you and the Bureau of Sport Fisheries are trying to put in jail, and I have constituents you are trying to fine, but in a public project with a fundamental violation, nobody does anything.

I am not just blaming you, Colonel. You are trying to do your job. Somewhere here there is a misapplication of the rule of law as far as I am concerned.

Colonel LEE. As Mr. Lankhorst mentioned, Mr. Fascell, there are specific guidelines prescribed by EPA.

Mr. FASCELL. I have already passed that point. I understand that. I understand what you are taking about there. I am getting back now to a person who finds out somewhere along the line that he must meet a requirement of the corps. He is halfway through the development and he gets a cease-and-desist order. All of a sudden, the Bureau of Sport Fisheries and Wildlife becomes a very important consideration and the U.S. attorney is brought into the act. The citizen must employ lawyers. He must do all of this to try to comply with the environmental questions—the technical procedures of the corps—and try to stay out of jail. But in the Mobile case, no one is bothered.

Colonel LEE. I would say in defense of our dredging operations in the Jacksonville district, of which I am the most familiar, we have gone to every conceivable length to put dredge spoil material in an area where there is no pollution of the waterways in terms of turbidity and the like.

Mr. FASCELL. I would not question that.

Colonel LEE. In open spoil areas, where it is just physically impossible to put the spoil elsewhere, we expend a tremendous amount of money on certain contracts—ongoing contracts—to put this spoil in areas where it is environmentally acceptable. I am not ashamed of our accomplishments.

Mr. FASCELL. I am not suggesting that at all. I do not have any reservation or question about what you are saying right now. I do have a question on the case that Mr. Lankhorst cited, which is a matter of national policy of the corps. We are talking about restoration and having to process an application from the beginning.

In that particular case, as I understand it, were you not required by the court to go back and process the original application or application for removal?

Mr. LANKHORST. Application for finishing construction.

Mr. FASCELL. So the court has said in that case that this amounts to an application after the fact.

Right?

Mr. LANKHORST. If I remember, it is an application after the fact.

Mr. FASCELL. So the court said you had to process an application after the fact in that particular case.

Mr. LANKHORST. Yes, sir.

Mr. FASCELL. That you could not proceed with enforcement until you had made a decision with respect to that, and then the court would review the entire matter to determine the equities of it.

Mr. LANKHORST. If we administratively determine that the material should be removed, then the court will enforce the mandatory injunction requiring its removal.

Mr. FASCELL. In other words, you are telling me that the decision in that case—and I would certainly like to have staff examine that for my benefit—you are telling me that in that case the court made it clear that it is referring back to the corps discretion on the question of enforcement, regardless of the equities?

Mr. LANKHORST. In considering that permit application, we would have to afford it administrative due process.

Mr. FASCELL. How about a case in which the corps refuses to process an after-the-fact application, Mr. Lankhorst, and instead turns the case over to the Justice Department to prosecute.

Are you telling me now in light of this court decision that that cannot be done or should not be done?

Mr. LANKHORST. That is correct, sir. The court held that our regulations provided for this procedure, and therefore it should be administratively followed before you take mandatory injunctive action against the developer.

[NOTE.—The decision referred to is *United States* v. *Joseph G. Moretti, Inc.*, Civ. No. 71–3137, 5th C.A., decided on May 15, 1973. The decision follows:]

In the United States Court of Appeals for the Fifth Circuit

No. 71–3137

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

versus

JOSEPH G. MORETTI, INC., AND JOSEPH G. MORETTI, JR., DEFENDANTS-APPELLANTS

Appeal from the United States District Court for the Southern District of Florida

(May 15, 1973)

Before BROWN, *Chief Judge*, GOLDBERG and MORGAN, *Circuit Judges*.

BROWN, Chief Judge: Proving again that legislative intent frequently comes to exceed even the wildest imagination of those responsible for enactment, it is ironic that as a product of a laissez-faire society, a 19th Century act is now once again the effective tool in this decade's awakening awareness of the importance of man's environment. The Rivers and Harbors Act of 1899 [1]—itself the product of congressional dissatisfaction with the consequences of the Supreme Court's *Willamette Iron Bridge Co.* v. *Hatch*, 1888, 125 U.S. 1, ——— S. Ct. ———, ——— L. Ed. ———, holding that there was no federal common law prohibiting an obstruction to a navigable stream—was at once the source of jurisdiction and the substantive basis for the action of the District Court.

[1] Rivers and Harbors Act of 1890, 26 Stat. 426, shortly replaced by the Act of 1899, 30 Stat. 1121, now found 33 U.S.C.A. §§ 401–26(1) See *Environmental Law: The Rivers and Harbors Act of 1899—a new remedy for illegal dredge and fill operations*, 24 Fla. L. Rev., 795, 796 n. 11, (1972).

Applying § 3 of the Act [2] which forbids the creation of obstructions in, or alteration of the features of the navigable waters of the United States without permission of the Secretary of the Army the Court ordered Joseph G. Moretti, Jr. to undo dredge and fill operations involving 400,000 cubic yards of earth, because of his failure to obtain the required permit. Despite the fact that Moretti violated the Act [3] flagrantly and our settled conviction that mandatory affirmative relief requiring a burdensome performance is statutorily and equitably appropriate on these facts, we modify and remand for completion of administrative action which conceivably could have the effect of validating the work done, thus rendering the issues litigated moot.[4]

Moretti owns lands at Hammer Point on Key Largo, one of the Florida Keys curving fingerlike for 120 miles into the Gulf of Mexico off the southern tip of Florida. His property was located about 1¼ miles from Tavernier on the Florida Bay side of the Key. Tavernier lies to the south of Hammer Point. Hammer Point is in turn about 4½ miles southwest of Rock Harbor.

Like the developers in our far-reaching opinion of *Zabel* v. *Tabb*,[5] he proposed to dredge and fill the land into a network of land fingers and canals for use as a mobile home park. Moretti, unlike his counterpart in *Zabel*, decided to forego the prerequisite imprimatur of the Corps of Engineers before making his proposed project a reality. Having purchased his land in 1969, Moretti had completed substantial work on his project when paid a fateful visit by two employees of the Environmental Protection Agency in December of 1970.

Lee Purkerson and John Hagen, the EPA employees, were not on official business at the time that they noticed the extensive work on the Moretti project. They took some pictures of the drag-line as it was removing soil from the underwater portion of the Bay bottom and adding it to the shorline thereby moving the shoreline and Moretti's property bayward. They could also see where channels had been cut or deepened between the fingers. Moretti asked them what they were doing there, a question which they turned back at him. They asked him if he had a Corps of Engineering permit and he said he did not. These facts were reported to the Jacksonville office of the Corps of Engineers. On December 30, 1970, the Corps ordered Moretti to cease from further work below the mean high water because this was a violation of Federal law unless properly authorized by the Secretary of the Army.

After one or two exchanges with the Corps Moretti stopped working, a cessation which was to last for at least a few months. As authorized under Corps regulations the Moretti Company applied for an after-the fact permit to dredge part of and

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[2] Section 3 states:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same."

The statutory authority for the injunction is found in § 406 which states:

"Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States."

[3] Without a doubt the Judge was moved because of ecological not navigational factors. He found that the adverse ecological consequences of the dredging and filling operation included the destruction of habitats of a large number of wading birds (including roseate spoonbills, reddish egrets and herons), removal of peat from the bottom of the bay deleteriously affecting the ability of the shallow water to support marine life, elimination of mangroves which play an important role in the ecology of the area, and significant injury to sport fishing in the area.

[4] Our not reversing the District Court expresses no approval of the cursory procedural aspects of the proceedings below. The haste with which the hearing and rulings were announced might well have been less than acceptable and required a remand, but the appellant expressly waived these objections at oral argument in favor of a ruling on the merits. We would say, however, that the inordinate swiftness probably accounts for the court, presumably on the government's insistence, paying no attention to the administrative structure built into the Act.

[5] Cir., 1970, 430 F.2d 199, *cert. denied*, 401 U.S. 910, —— S. Ct. ——, —— L.Ed.2d ——. See *Environmental Law — Consideration Must Be Given to Ecological Matters in Federal Agency Decisions*, 71 Boston College Ind. & Comm. L. Rev. 674 (1971); *Comment*, 50 B.U.L. Rev. 616 (1970); *Note*, 19 Kan. L. Rev. 539 (1970) and *Note* 16 Vill. L. Rev. 766, 778 (1971) which describes Zabel as "an important innovation in the struggle to preserve the environment of the coastal zone." *Cf.*, *The Refuse Act Permit Program; The Corps of Engineers' Role in Enforcement and Administration*, 9 Houston L. Rev. 683 (1972).

fill part of Florida Bay. That is, he sought a permit which would legitimize the work done and to be done.

Structure of the Act and Regulations

In addition to construction and maintenance of flood control and other improvements on the navigable waters of the United States, the Secretary of the Army acting through the Corps of Engineers has been charged by Congress with administering the Rivers and Harbors Act of 1899 [6] as well as the other principle laws enacted for the protection of navigation and the integrity of the navigable waters of the United States. The Corps of Engineers—the eyes and ears, and sometimes hand of the Secretary—is headed by the Chief of Engineers who is charted by law [7] with advising the Secretary of the Army of the propriety of issuing permits. The Corps itself is divided into 11 "divisions" which are in turn subdivided into 37 "districts." As will be seen later, authority to grant permits is in some cases delegated down to the level of the District Engineers.

The duties of the Secretary of the Army and the Corps of Engineers under the Act together with the administrative procedures which include the delegation of authority through the Corps are set out at 33 C.F.R. § 209.120 (1972).

The Secretary has authorized the Chief of the Corps, at the latter's option, to delegate authority to issue permits to District Offices of the Corps in any case in which the application for construction in navigable waters is "entirely routine and * * * involve[s] no difference of opinion * * * nor any opposition or other considerations which should be decided by higher authority." [8] The regulations specify that this grant is not a delegation of the Secretary's discretionary powers.[9] By § 209.120(c)(1)(iii) the Chief of Engineers has exercised this authority and commissioned Division and District Engineers with power to grant permits in the name of the Secretary where the matter is routine.[10]

The Corps' general policy for issuing the permits require that it take into consideration and evaluate "all relevant factors, including the effect of the proposed work on navigation, fish and wildlife, conservation, pollution, aesthetics, ecology, and the general public interest * * *." [11] More specifically the Corps is required by its regulations, various statutes, executive orders and an accord between the Secretary of the Interior and the Secretary of the Army [12] to consider all applicable data including the views of other federal agencies and the views and objections of state agencies before granting a permit.

The watchword of the Corps' relation with other federal agencies charged with protection of the environment is cooperation. Besides its duty to cooperate and collaborate the Corps is charged by executive order, as are all federal agencies, to improve water quality through prevention control and abatement [13] of water pollution. In its attempt faithfully to carry out this responsibility the Corps has through formal regulations [14] established a policy, in cases where dredging operations may cause pollution problems, of seeking the technical assistance of state and federal pollution control authorities and conditioning the granting of the permit on the establishment of controls which will insure that federal and state

[6] See footnote 1, *supra*. The sections of the Statute as enacted, e.g. § 10, do not correspond to the Sections of the Statute as codified in 33 U.S.C.A. §§ 401-26(i). Section 10 of the original act is § 403 of 33 U.S.C.A. This is pointed out for no other reason than to save the reader the possible confusion which might be encountered.

[7] See, e.g., § 403 of 33 U.S.C.A., note 2, *supra*, the Section which defendant Moretti failed to heed. In this section Congress has required that certain permits not be issued unless "recommended by the Chief of Engineers and authorized by the Secretary of the Army."

[8] § 209.120(c)(1)(i).

[9] § 209.120(c)(1)(ii).

[10] § 209.120(c)(1)(iii):

"*Division and District Engineers.* The Chief of Engineers has authorized Division and District Engineers to issue direct from their own offices, in the name of the Secretary of the Army, permits under Sections 10 and 14 of the Act of March 3, 1899, for work and structures in or over navigable waters in cases which are entirely routine and which involve no doubt as to the law, facts or regulations nor any opposition or other consideration which should be decided by higher authority. A case is held to be entirely routine, as determined by the Division Engineer, if the approval of the plans would unquestionably be given were the matter presented to the Chief of Engineers and the Secretary of the Army. The mere fact that proposed work is extensive in scope does not necessarily remove it from the class of routine cases if no possible objection to the work can be foreseen. Applications for permits for works in navigable waters which extend a reasonable distance beyond harbor lines will be considered routine, if they otherwise conform to the foregoing criteria."

The after-the-fact permit procedures, discussed in text, *infra*, so vitally important to appellant, are treated for purposes of delegation of authority to District Engineers just as any other permit. That is, subject to the special restrictions, *infra*, the District Engineer handles these as he would any other "routine" permit application.

[11] Section 209.120(d)(1).

[12] As to the regulations see, e.g., § 209.120(s)(3). "Consideration is given to the effect of proposed coastal structures or improvements upon existing navigation projects and upon adjacent shore properties * * *." The statutes, executive order, and agreement, are discussed in text, *infra*.

[13] Executive Order 11288 is transplanted and summarized by the Secretary of the Army in §209.120(d)(8).

[14] Id.

water pollution control standards are met. This policy, and other statutorily required policies are summarized in a "memorandum of understanding" between the Secretary of the Army and the Secretary of the Interior signed July 13, 1967.

The memorandum of understanding was drafted in recognition of the statutory responsibility [15] of the Corps of Engineers and the Department of Interior to interrelate their activities in the area of water pollution control where damage to fish and wildlife is possible as well as in recognition of the agencies responsibilities under Executive Order No. 11288 as discussed above. The memorandum sets forth procedures—given life in the Corps of Engineers permit procedure, *infra*—for carrying out these policies.

These procedures provide that (i) upon receipt of an application for dredging or filling permits the District Engineer shall notify Regional Directors of the Federal Water Pollution Control Administration, Fish and Wildlife Service, National Park Service, and the appropriate state agencies. (ii) The Regional Directors would immediately make such studies and investigations as are necessary and inform the District Engineer whether the quality of the waters will be reduced in violation of applicable standards or the value of natural resources and related environment will be unreasonably impaired. (iii) The District Engineer will hold public hearings when response to a public notice indicates that all parties will not have an opportunity to be heard except at a public hearing. (iv) Besides weighing *all* factors in granting a permit the District Engineer shall, when advised by the Regional Directors that work proposed will impair water quality or related natural resources, encourage the hopeful permittee to take steps to resolve the dispute at the district level and failing this shall refer the case to the Chief of Engineers—his counterpart the Regional Director submitting his views to his agencies "Washington headquarters"—for appropriate action. (v) Finally the Chief of Engineers and the Under Secretary of Interior shall consult and attempt to resolve any differences between their departments and failing this the case shall be submitted to the Secretary of the Army for decision after consultation with the Secretary of the Interior.[16]

The Corps regulation §§ 209.120(e), (f) and (g) govern the applications for permits and the handling of these applications with regard to public hearings and notices to other agencies of federal and state governments. The regulations place the duty of giving both public notice and notice to the other agencies mentioned above on the District Engineer. The permit application must contain a sketch showing the location and extent of the work proposed. This sketch will accompany the Engineer's notice. The regulations state flatly that "the public notice is mandatory, and no permit or extention of time in which to complete work authorized by a permit will be granted unless notice has been issued and a reasonable time afforded for a protest * * * ." [17] The period in which the permit is to be kept pending awaiting objections is set at a minimum of ten days after issuance of notice. The regulations further provide that under normal circumstances the period should be not less than 30 days after the actual mailing of notice, and a longer period can be afforded in exceptional or important cases.[18] Public hearings are provided for whenever it appears that there is sufficient public interest to justify such action and in case of doubt a public hearing is required. Cited as a specific example are cases in which there is general public opposition to issuance of a permit.[19] Hearings, when held, are to be conducted in an informal manner, presided over by the District Engineer or his delegate with a full opportunity given each side to express their views. Formal adversary proceedings are not contemplated.[20]

In a sentence, the regulations contemplate application, proclamation, coordination, information, argumentation, consideration and then determination.

Whatever doubts there might be about the Third Circuit's reading a permit structure into the related Refuse Act, 33 U.S.C.A. § 407 (§ 13 of the Rivers and Harbors Act of 1899) in *United States* v. *Pennsylvania Industrial Chemical Corp.*,

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[15] *See*, Fish and Wildlife Coordination Act, 16 U.S.C.A. 661, et seq., Fish and Wildlife Act of 1956, 16 U.S.C.A. 742a et seq.

Perhaps the largest raptor to be added to the statutory ecological protection aviary is the National Environmental Policy Act of 1969, §§ 101-207, 42 U.S.C.A. §§ 4331-4347. In Zabel v. Tabb, 5 Cir., 1970, 430 F.2d 199, *cert. denied*, 401 U.S. 910, ——— S.Ct. ———, ——— L.Ed. ———, we held that the Act's § 101 has talons meant neither to be ineffectively blunt nor always remaining on the wrist, only mockingly suggesting fierceness of their ever tethered bearer. Rather, with this tool, the Secretary of the Army is empowered—indeed required—to "consult with, consider and receive" information regarding the nature of work sought to be done and to seek out those permit applications which should not be granted and interdict their flight.

[16] The memorandum is set out in its entirety at 33 C.F.R. § 209.120 beginning at page 322 (1972).

[17] Section 209.120(f)(1).

[18] Section 209.120(f)(5).

[19] Section 209.120(g)(1) and (2).

[20] Section 209.120(g)(4).

3 Cir., 1972, 461 F.2d 468, *cert. granted*, 41 U.S.L.W. 3301, it is positive that § 3 (33 U.S.C.A. § 403) is structured on a permit basis. Indeed the Act itself,[21] by its very terms makes it unlawful "to excavate or fill * * * any navigable water of the United States, unless the work has been [i] recommended by the Chief of Engineers and [ii] authorized by the Secretary of the Army * * * ." [22] And the regulations, which are in no wise questioned here, specifically authorize an application for, and the granting of, a permit after the commencement or completion of the work, under appropriate circumstances.

After-the-fact permits—so vitally important to whatever chances Moretti has for saving the Hammer Point project—are specifically recognized in the Corps regulations.[23] Read in conjunction with all the regulations, the regulations concerning after-the-fact permits provide that they be processed in the same manner as other permit applications. These procedures were not followed to full completion of the administrative processing of this application in this case. This is of great import to what we do in this opinion.

So long as that regulation stands the Department of the Army was required to respect it. *Cf. Vitarelli* v. *Seaton*, 1959, 359 U.S. 535, 7 S. Ct. 968, 3 L.Ed.2d 1012; and *see Schatten* v. *United States*, 6 Cir., 1969, 419 F.2d 187; *Smith* v. *Resor*, 2 Cir., 1969, 406 F.2d 141; and *Elmo Division of Drive-X Company* v. *Dixon*, D.C. Cir., 1965, 348 F.2d 342. Moretti had a right to file the application and have it processed in accordance with those regulations. Conversely, the Corp of Engineers as the delegated agent of the Secretary of the Army had the duty to process Moretti's application.

But as it was, somewhere during administrative gestation the permit application was aborted, an event provoked by the mandatory injunction of the District Judge.

THE BUCK STOPPED WHERE?

The record reflects without dispute that the resident engineer in the Miami Beach office of the Corp forwarded the after-the-fact permit application to the Jacksonville District Engineer's office without objection.[24] Both he and the responsible employee in the District Engineer's office testified that in practice if the permit were a "routine case" in which no likely objection could be foreseen the District Engineer would grant or deny the permit.[25] If controversy seemed likely or in fact developed regulations prescribed that the decision should be made by "higher authority." [26]

Likewise, in practice, in approving the permit under usual circumstances the Jacksonville District Engineer committed to Mr. Arthur L. McKnight, Chief of the Operations Division, the authority to act for the District Engineer. That is, if the permit application, before the fact or after-the-fact, were approved by Mr. McKnight and the project was within the authority delegated to the District Engineer,[27] Mr. McKnight would direct the final approval of the application and issuance of the permit in the name of the District Engineer.

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[21] See note 2, *supra*.

[22] Id.

[23] Section 209.120(c)(1) (iv) states:

"*Construction and Other Work Performed Without Prior Authority.*

"(*a*) District Engineers are authorized to approve plans for structures and work of the classes for which they are authorized to issue permits when the application for approval is submitted after the commencement or completion of the structures of work, subject to the following:

"(*1*) Approval will be limited to those cases where the necessary primary authority, State or Federal as the case may be, validly exists, when the work was innocently constructed, and when there is no objection to the work,

"(*2*) The applicant will submit the plans in the prescribed form,

"(*3*) Notice of the application will be duly issued

"(*4*) The approval will be issued in the prescribed form, ENG FORM No. 96c, W.D., Eng.,

"(*5*) The approval will be signed and recorded as prescribed for permits,

"(*6*) Application for approval of plans for work which has been completed requiring actions by higher authority will be reported as prescribed for permit applications, and

"(*7*) When forwarding approval, the applicant will be informed that the law contemplates prior approval, and that, in the future, plans must be submitted in ample time for their consideration by the Chief of Engineers before construction is started."

[24] It is not clear whether the Resident Engineer made a recommendation that the permit be granted or simply forwarded the permit without objection. In either case his sending the permit to Jacksonville from Miami was in effect an endorsement of the application since he testified that if he had objections to the application he would normally return it to the parties with requests for alteration.

[25] See, § 209.120(c)(1)(iii).

[26] *Id.* Of course what passing the application to "higher authority" entails is detailed by the applicable statutes and the memorandum of understanding between the two Secretaries, as well as the substantive and procedural requirements of the Corp of Engineers' regulations, *supra*.

[27] See note 10, *supra*.

When Jacksonville received the permit application and found everything in apparent order it issued a public notice and informed the appropriate state and federal agencies[28] as required by the regulations. The Florida authorities, after some indecision, stated that they had no objection to the completion or existence of the project. The Bureau of Sports, Fisheries, and Wildlife of the Department of Interior, however, objected to the granting of the permit and requested that the Corps of Engineers refuse to issue the permit. The Secretary of the Interior—speaking through his regional field representative—has literally adopted the views of the Bureau of Sports, Fisheries, and Wildlife. The Bureau of Sports, Fisheries, and Wildlife objected on the ground that to grant the after-the-fact permit would "provide official sanction to an illegal operation." [29]

At this point the permit granting procedure seems to have ground to a halt and left Moretti's application in a sort of limbo [30] if not in fact stranded by the ubiquitous "sunken object." Although standard procedure under the regulations would have been for the Jacksonville office to forward the application to Washington because of the objections of the other government agencies, nothing was done, that is, nothing was done by the Corps of Engineers on the application.[31]

SELF HELP FOR THE IMPATIENT?

Despite the unrevoked order of the District Engineer to discontinue dredging, Moretti resumed working below the mean high tide line, apparently in early June 1971. Presumably, he simply decided that he had waited long enough for the Corps of Engineers to act on his permit and that it was time to resume the construction of Hammer Point.

The permit application had been forwarded from Miami to Jacksonville on March 4, 1971. Notice had been given by the District Engineer's office on March 17 stating that objections were due by April 16. Interior, as well as one state agency, requested a delay in the granting of the permit so that it would have time to respond adequately. Interior's objections, voiced by Bureau of Sports, Fisheries & Wildlife, and echoed by the Regional Director were lodged May 3, and Moretti was informed of the objections. It does not appear that a public hearing was ever scheduled.

Rumors that Moretti had resumed work reached the Jacksonville office which instructed engineer Ross of the Miami office to investigate the situation. On July 14, 1971 he found that Moretti had resumed, and substantially completed, work on the Hammer Point project.

THE SCENE OF ACTION SHIFTS

Pricked by Moretti's disregard of the permit requirements the government lashed out on several fronts. An information was filed by Engineer Ross charging Moretti with a criminal violation of § 403 [32] which is outlawed by 33 U.S.C.A. § 406 and Moretti was arrested July 15. While Moretti was appearing for arraignment on July 30, originally set before a magistrate but taken over by the trial judge, Moretti was served with the civil complaint seeking preliminary and permanent injunction of further operations below the mean high water mark and for relief in the form of a mandatory injunction forcing Moretti to undo the fruits of his labors, all as authorized by § 406.[33]

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[28] See notes 15 and 17, *supra*.

[29] It is at least arguable that this is an insufficient ground for "objection" under a permit structure which allows for after-the-fact permission. However, since the letter of objection from the Bureau of Sports, Fisheries and Wildlife stated that Moretti's own actions had made it impossible to tell how much damage had been done they would object on this seeming *clean hands/policy ground*. It is not completely clear whether they were saying (i) Moretti made it impossible to tell how much ecological damage had been done so we will presume that more than a tolerable amount had been done or (ii) Moretti is a bad fellow and should not be given a permit since we would be condoning his actions or (iii) both (i) and (ii).

The Environmental Protection Agency did not object to the issuance of the permit. It suggested—without reference to the permit application—that the case be investigated and that legal action be initiated for any damages to the environment. But with the Executive Branch having importuned its Department of Justice to seek court relief on the ground of ecological damage, it is plain that in any Corps proceedings this would have been a significant if not decisive issue.

[30] Perhaps one reason that we are not entirely sure what happened to the permit is that Mr. McKnight, the Chief of the Operations Division of the Jacksonville office, retired on May 31, 1971. No one else from the Jacksonville office testified and no effort was made by the government to show what happened to the application after he left.

[31] There was also apparently some problems with the technical adequacy of Moretti's permit application. It was discovered in Jacksonville that the application apparently did not show one of the channels that Moretti had dredged. He acknowledged this deficiency in a letter to the Corps and although it appears to have been one of the problems in granting of the permit it was a mere technical imperfection which from all appearances could have been easily corrected. The record does not suggest that it caused the Corps to abandon its standard orderly permit processing procedure.

[32] See note 2, *supra*.

[33] Id.

After a short hearing the trial court issued a preliminary injunction and proceeded to hear the case on the merits three weeks later. The court found, as is evident from the record, that Moretti had done substantial dredging and filling without a Corps of Engineers permit. The Court found the waters navigable, and determined that some of the work was done in the navigable water. The District Court ordered that the government should have all the relief it sought—namely to have Moretti undo what he had done.

Moretti challenged in the District Court and challenges on appeal the proof of a number of necessary elements of the government's case under 33 U.S.C.A. § 403 and § 406. They are (i) whether the water in question is "navigable water of the United States," (ii) whether the Mean High Water Mark was adequately proven, (iii) whether any obstruction to navigation had been created, and (iv) whether § 406 of the Act authorized the District Court to order the removal of a land fill as a "structure."

NAVIGABILITY

Florida Bay is located at the southern tip of the Florida peninsula and merges with the Gulf of Mexcio on its western boundary. On the east, Florida Bay is adjacent to Biscayne Bay which leads to the Port of Miami.[34] The length of Florida Bay is traversed by the Intracoastal Waterway which runs from the Gulf and enters Biscayne Bay through Florida Bay. Although the record did not reveal the precise distance of appellant's property from the Intracoastal Waterway, it is clear that it is in close proximity to this Waterway. The Coast and Geodetic Survey Chart shows that at its nearest point, the Intracoastal Waterway is less than one-half mile from Hammer Point.[35]

Navigability, even at a time when its requirements were more stringent, was simply a question of whether the waterway "in its natural and ordinary condition affords a channel for useful commerce." The Daniel Ball 10 Wall 557, 19 L.Ed. 999 (1871).[36] Accessible as it is to both the Gulf of Mexico and Biscayne Bay, and traversed lengthwise by the Intracoastal Waterway, Florida Bay is a natural passage for commerce and easily meets even the historical-literal test of navigability. Of course, as with most bodies of water, there comes a point where the depth of water is minimal as the bottom slopes up to the bank. But one would harldy contend that the Mississippi is any less navigable simply because a pirogue would go aground at the water's edge.

Questioned directly as to the navigability of Florida Bay the Resident Engineer for the Corps testified unequivocally that Florida Bay is a navigable water. Indeed, if Florida Bay were unnavigable Moretti's development of his property including finger slips and canals so that his mobile home park would be a "live-in marina" would be incomprehensible and obviously wasteful and a deception to purchasers who expected waterborne access to the sea, not the restricted movement in a short landlocked pond.

OBSTRUCTION TO NAVIGATION

Moretti's argument that there was no showing of an obstruction to navigation, and hence that one element prerequisite to relief was missing from the government's case, is unavailing. In light of *Zabel* v. *Tabb*, 5 Cir., 1970, 430 F.2d 199, 207 and *United States* v. *Perma Paving Co.*, 2 Cir., 1964 332 F.2d 754 any argument that the filling of navigable waters does not reduce navigable capacity of the filled waterway and thereby constitute an obstruction within the meaning of § 403 borders on the frivolous.[37]

STRUCTURES

Moretti next contends that § 406[38] grants to the District Court only the authority to cause the removal of "structures" from navigable water and that a land fill is not a structure. The meaning of "structures" in this provision has often enough

[34] Biscayne Bay has long been judicially recognized as "navigable." See Miami Beach Jockey Club v. Dern D.C. Cir., 1936, 83 F. 2d 715, *cert denied*, 299 U.S. 556, —— S. Ct. ——, —— L. Ed. ——.

[35] C& GS, 850, August 1972.

What is safe for mariners to rely on may safely be used by Judges. *See*, DeBardeleben Marine Corp. v. United States, 5 Cir., 1971, 451 F. 2d 140. The chart shows a depth of 2 feet along the north edge of the key in the Hammer Point area.

[36] "The test laid down in the DANIEL BALL was generally adhered to by the Supreme Court until the decision in United States v. Appalachian Electric Power Co., 311 U.S. 377, 61 S. Ct. 291, 85 L. Ed. 243, in which the Court gave the term 'navigable water' in the Federal Power Act a broader construction than that laid down in the DANIEL BALL and in the decisions that followed it." Georgia Power Co. v. Federal Power Commission, 5 Cir., 1946, 152 F. 2d 908, 912. The expansion of the concept of "navigability" was to include the capacity for reasonable improvements as an indicia of the ability of the waterway to support commerce—whether presently or potentially.

[37] We hold—disclaiming any novelty for this conclusion—that any filling of navigable waters creates an obstruction to navigation.

[38] See note 2, *supra*.

been the subject of litigation [39] that we have no doubt that it encompases the land fills here in question. As the Supreme Court said in *United States* v. *Republic Steel Corp.*, 1960, 362 U.S. 482, ____ S.Ct. ____, ____ L.Ed.2d ____, its decision in *Sanitary District* v. *United States*, 1925, 266 U.S. 405, ____ S.Ct. ____, ____ L.Ed. ____, is enough. In Republic Steel the Supreme Court held that accidental sedimentation which caused the filling of a navigable water constituted a structure within the meaning of § 406. This doube-bottomed answer is enough for us.

MEAN HIGH TIDE LINE

A good deal is urged about Mean High Tide Line (MHTL). Just what bearing it has at this, not the enforcement, stage is not easy to say. Everyone apparently concedes that the mean high tide line is not a precise measurement. And all concede for this case that relief sought depends on the government proving that Moretti dredged or filled bayward of MHTL. For the Corps has no power landward of it to regulate his conduct or force reconstruction of the topography [40] as it existed before he began work. The District Court agreed that that which was landward of MHTL would not, could not, and should not be affected by mandatory injunction.[41]

The record proof on location of MHTL took two forms. The first was on the trial. The second, as a part of the plan to be filed by Moretti outlining the method to be followed in restoring the prior condition. On the trial, the government called a civil engineer, Mr. James Glass, employed by Moretti in designing the Hammer Point project and in soliciting the after-the-fact permit from the Corps of Engineers. The MHTL was indicated on the sketch which accompanied the application for the after-the-fact permit. Engineer Glass testified that he placed the MHTL from aerial photographs [42] taken before the project got underway. The District Court accepted this determination as correct, but whether the Corps of Engineers ever did is unknown since the permit application aborted. The Resident Engineer also testified as to the location of the MHTL. He stated that normally the MHTL would be located by visual observation, which, however, would be impossible in an after-the-fact situation. The upshot of his testimony was that he had presumed the location of the MHTL from the permit application supplied by Moretti.

Actually, the Court did not undertake to fix MHTL. His final order in a negative sense prohibited further activity bayward of it.[43] And the hotly contested mandatory injunction [44] simply ordered Moretti (i) to restore the prior conditions bayward of MHTL and (ii) to file a formal plan showing in detail how the work was to be carried out.[45]

As a part of the formal post-decree plan Moretti included a plat prepared by Mr. Post, an engineer associated with the same firm as Mr. Glass, the engineer who drafted the after-the-fact permit application. Engineer Post's plat shows, and Moretti cannot seriously dispute, that substantial areas of excavation and refill were bayward of MHTL. If Moretti challenges that, there is no mark of it in the record. Since there is no indication whether the District Court approved

[39] *See Note*, 24 U. Fla. L. Rev. 795 (1971).

[40] Perhaps we should call that which was under water before excavation the "bottomography."

[41] The findings of fact and conclusions of law of the District Court appear at 331 F. Supp. 151 (1971).

[42] Although referred to in testimony these photographs are not part of the record in this case. They apparently were not admitted as exhibits in the District Court. These photographs were also the basis for the restoration plan map. *See* note 45, *infra*. Some other photographs, taken in 1947, which one witness testified represented the shoreline in 1969 as well as 1947 were not made a part of the record on appeal, although they were admitted in the District Court.

[43] The negative feature of the order stated that Moretti and his company "are permanently restrained from further violations of Title 33, United States Code, Section 403, and that they are permanently enjoined from conduction any further excavation and alteration of the condition and capacity of Florida Bay at Hammer Point, Key Largo."

[44] Moretti has been "permanently enjoined and directed to remove all fill, sand, rock, gravel, rip-rap, and material of any other description the defendants caused to be placed at their trailer park development property located at Hammer Point, Key Largo, bayward of the mean high water mark that existed prior to the defendants' operations in this area, and to restore the navigable capacity of Florida Bay to its original condition as that bay existed at Hammer Point prior to the defendants' development operations."

[45] As the Court pointed out, and the order provided, special care had to be exercised during the restoration work to avoid further ecological damage.

The order commanded:

"And further, the defendants are directed to present to the Court within twenty (20) days of the issuance of this order, adequate plans for the safe removal of this material so as not to interfere with marine or plant life in Florida Bay by the causing of excessive siltation or turbidity. The defendants' are directed to outline in this plan the following:

(a) The equipment to be used in the removal of said material;
(b) The procedures to be taken to safeguard Florida Bay; and
(c) The estimated time requested for compliance with this order.

Upon approval of this plan by the Court, defendants are directed to immediately begin removal of said fill."

the plan [46] it is unavoidable that the exact line may still be open to some question either in further proceedings before the Department of the Army, the District Court or both. But no action is yet before us which would call for any modification of MHTL.

COURT'S USE OF NEGATIVE—AFFIRMATIVE INJUNCTION

Putting to one side the drawing of the exact MHTL we have no doubt that the Judge had the right to reach the conclusions that he did both on jurisdiction and the operational facts. It is equally clear that in the posture of the case as it came to him and as he handled it (see notes 30 and 4, *supra*, the Court had the power to issue appropriate injunctions prohibiting any further work. This authority is drawn not only from the Court's equitable powers in carrying out the obvious policy of the Act but such relief is expressly authorized by § 406, see note 2, *supra*.

And for the further guidance of the Court and the parties as this case now takes a new twist we have no doubt that the issuance of a mandatory injuction requiring extensive restoration operations at very large expense to the developers is entirely within the Court's power as expressly mandated by the statute. Section 406 just plainly states, "the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist."

Thus, the statute itself specifically empowers the Court to do just what has been done. We do not mean to say here that in every case involving a violation of the Rivers and Harbors Act where no permit has been obtained and an order to cease operations has been issued the Court must impose such serious sanctions. But clearly the Court has the power to do it and we perceive nothing in this record which would compel us to say that in the Chancellor's discretion he ought not to have imposed this very substantial burden upon this developer.[47]

But while we find ample jurisdiction, and on the record a set of facts which would otherwise authorize the stringent mandatory injunction of restoration, this part of the Court's order must be vacated to permit the further proceedings on the application for an after-the-fact permit.

THE SCENE SHIFTS AGAIN BACK TO THE ARMY

As we have pointed out in great detail § 403 and § 406 with their complementary regulations are structured on a permit system. The statute itself is not to be read as prohibiting all such obstructions, but only those not authorized in accordance with the regulations. Those regulations prescribe also the right to seek an after-the-fact permit. Moretti has initiated this application. Through no apparent fault of his own and without his ever having withdrawn it the Corp of Engineers has either ignored the application or reached some undisclosed determination that because the United States Attorney has successfully been importuned to enter the case the Corps and the Department of the Army have no further obligation. We have held above and repeat again that this is simply not so.

Since the statute and the regulations recognize that the developer has a right to seek—not necessarily obtain—an after-the-fact permit and Moretti has undertaken to do this in a way not challenged for its procedural or substantive sufficiency, a Federal Judge has no power to cut off this statutory scheme and insert his judgment for that of a successive layer of experts in the Corp of Engineers, the Chief of the Engineer's office, the Department of the Army, and now, in collaboration with the other departments or agencies under environmental statutes.

Whatever difficulties Moretti may face in trying to persuade those authorities that he should have an after-the-fact permit he is entitled to have that application processed fairly and diligently with an opportunity as permitted under the regulations to present supporting data, facts and argument as to why such relief should

[46] Moretti filed a plan calling for extensive removal and refilling but then sought supersedeas to the injunction while perfecting his appeal from the outcome below. The Court required supersedeas in the amount of $1,000,000 which Moretti was unable to meet. However, the enforcement of the injunction was stayed by the granting of a temporary emergency stay by this Court, which has remained and is still in effect.

[47] Although we think this is a matter for initial determination in the further administrative proceeding which we require, one of the things which Moretti emphasizes that makes the result so harsh is that his is just one of a number of like projects which had therefore been either approved by the Engineers or to which they raised no objection. This throws in a sharp conflict the claim of equal protection—or perhaps more accurately an equal right to violate the law—a sometime facet of equal protection which is today a very appealing claim, on the one hand, and the incessant demand from environmentalists that what has gone on in the past can no longer be tolerated and the time has come to start cleaning up no matter how much it hurts, on the other. *Cf.*, Zabel v. Tabb, 5 Cir., 1970, 430 F. 2d 199, note 5, *supra*.

be granted. Since the application is either still in the Jacksonville office or perhaps has died there, the Army somehow has to revive it, put it back on the tracks and start the machinery as contemplated by all of the regulations and the accord between the Secretary of the Army and Secretary of the Interior and the application of all of the other environmental statutes and regulations. We do not undertake here to outline the scope and detail of those administrative proceedings. They must go on fairly as permitted by the regulations. As we read them, if there is a disposition to grant the after-the-fact permit by the Chief of Engineers and the Secretary of the Army they must then consult all of the other agencies concerned with environmental factors which as specified in pertinent legislation and regulations must be brought into the picture.[48]

We do think, however, that as a matter of primary jurisdiction [49] it is in the administrative process that the MHTL must first be determined. For where the boundary of its authority is this elusive line, it should have the first opportunity to determine whether and to what extent the area is or is not within its jurisdiction. *Federal Power Commission* v. *Louisiana Power & Light Co.*, 1972, 406 U.S. 62 647, 92 S.Ct. 1829, _____, 32 L. Ed. 2d 369, _____; *J. M. Huber Corp.* v. *Denman*, 5 Cir., 1966, 367 F. 2d 104, and *Weymouth* v. *Colorado Interstate Gas Co.*, 5 Cir., 1966, 367 F. 2d 84; (sequeled in *Mobil Oil Corp.* v. *FPC*, D.C. Cir., 1972, 463 F. 2d 256, *cert. denied*, 406 U.S. 976, 32 L. Ed. 2d 676, 92 S.Ct. 2409, the D.C. Circuit reversed the FPC.

This line limits the jurisdiction of the Corps of Engineers both negatively and affirmatively, and inescapably they must determine this as a part of the application now pending. Whether in the administrative process the agency should rely to a great extent upon the record and findings of the Court below is a matter for initial determination by it.

Of course the action or non-action of the Department of the Army is judicially reviewable under the Administrative Procedures Act of 5 U.S.C.A. §§ 702, 704 (Supp. V 1970). This is precisely what occurred in *Zabel* v. *Tabb*, *supra*, and *Bankers Life and Casualty Company* v. *Village of North Palm Beach*, 5 Cir., 1972, 469 F. 2d 994.

THE SCENE SHIFTS AGAIN—BACK TO THE COURT BELOW

The upshot is that we remand the case for the Court to keep it actively on its docket. The prohibitory injunctions are to remain in full force pending final determination in the administrative proceedings and any appeals, administrative or judicial, therefrom. The mandatory injunction is vacated, subject to being reinstated on a proper showing after completion of the administrative proceedings and any appeal therefrom to the extent that the after-the-fact permit application does not authorize any or all of the work bayward of MHTL. Of course the Court is authorized to grant such interim relief as might be necessary on a proper showing to prevent further incursions into nature's domain growing out of inaction either in maintenance or in nonrestoration because of the stay which we have heretofore issued.[50]

As a tag end, also for the guidance of the parties and the Court on proceedings on remand and after completion of the administrative process, we reject the contention of Moretti that a District Court, as would an administrative agency, is required to obtain an impact statement and go through the procedures set forth in the intricate structure of environmental statutes and regulations where it is otherwise appropriate for an injunction to be issued on equitable principles or because of statutory standards or policies. The Judge should, of course, be conscious of the ecological factors and in many cases it would be appropriate, and in some it might be essential, that he call in the appropriate agencies, state and federal.[51] But the Judge does not have to involve himself in the sometimes impossible task of writing an impact statement that will satisfy all.

VACATED IN PART and REMANDED.

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[48] It might be argued that the Army need not consult anyone if after appropriate hearing it decides on its own that no permit should be granted on the theory that there is no "impact" on the environment it it is denied. We have, however, questioned this narrow reading of "impact", although in quite a different context *See*, Hiram Clarke Civic Club, Inc. v. Lynn, 5 Cir., 1973, _____ F. 2d _____ [No 72-1208, April 3, 1973]; and *cf:* Save Our Ten Acres, et al. v. Kreger, 5 Cir., 1973, _____ F. 2d _____ [No. 72-2165, January 16, 1973].

[49] This Circuit has—we think with wisdom—been cautious not to trample the primary jurisdiction of administrative agencies. See A.T.A. of Texas v. King, 5 Cir., 1965, 349 F. 2d 873, 883; and International Paper Co. v. FPC, 5 Cir., 1973, _____ F. 2d _____ [No. 71-3531, Feb. 7, 1973], (Brown, Chief Judge, concurring) Bankers Life and Casualty Co., *supra*.

[50] Since we vacate the mandatory injunction subject to reinstatement the stay heretofore issued is terminated on the issuance of our mandate.

[51] We have done this hundreds of times in school integration cases.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

[NOTE.—On May 10, 1973, the Corps of Engineers published a proposed revision of its regulations concerning the issuance of permits under the River and Harbor Act of 1899. The proposed regulation, entitled "Permits For Activities in Navigable Waters or Ocean Waters," is printed in the Federal Register of May 10 (38 F.R. 12217). (For public comment on the proposed regulation, see appendix 2, part C, of this hearing.) The subcommittee's correspondence relative to the adequacy of the proposed regulation—including matters raised by the *Moretti* decision, *supra*—and to its promulgation, follows:]

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 5, 1973.

LT. GENERAL F. J. CLARKE,
Chief of Engineers,
Department of the Army,
Washington, D.C.

Dear General Clarke: On May 10, 1973 (38 F.R. 12217), your agency published its long awaited proposed regulation governing the issuance of permits under several statutes administered by the Corps of Engineers.

Several provisions of these proposed regulations give us concern. But before commenting on the most significant of these provisions, we want to express our strong objections to the cumbersome, confusing, and nearly unintelligible numbering and lettering system used in these regulations, which, in one section, includes over 150 subsections, paragraphs, subparagraphs, and sub-subparagraphs. Is it really impossible for the Corps, perhaps with the cooperation of the Office of the Federal Register, to devise a better and less burdensome numbering system than is used in these regulations? We urge that these regulations be given a simpler numbering system before they are promulgated finally so that the public, as well as the bureaucracy, can understand then.

I. UNAUTHORIZED ACTIVITIES AND AFTER-THE-FACT PERMITS

The Committee on Government Operations and our Subcommittee have, on several occasions, criticized the Corps' handling of illegal activities and its practice of issuing after-the-fact permits. The Corps has, in effect, treated applications to legalize illegal activities in the same manner as other applications for permits. Our Committee's report (H. Rept. 92–1323; Aug. 10, 1972) entitled "Increasing Protection for our Waters, Wetlands, and Shorelines: The Corps of Engineers," said (p. 22):

"The Committee recognizes, of course, that prosecution of illegal acts is not always desirable. However, it believes that all of the Corps' district engineers should seek to 'vigorously prosecute,' civilly or criminally, such offenders more frequently than has been done in the past. Unless it is positively clear that the public interest is better served by the issuance of 'after-the-fact' permits, the objective should be not to legalize an illegal act, but to halt such acts and protect our wetlands.

"The test applied by the Corps, as explained by Colonel Sargent—that the Corps will not 'recommend' prosecution unless 'it is clear * * * that the violator willfully and knowingly violated the law'—is one not set forth in the statute itself.

"Although the Supreme Court has not yet ruled on what, if any, *scienter* (knowledge) requirements the Refuse Act imposes, a long line of lower Federal court decisions has consistently held that a violation of the Refuse Act (33 U.S.C. 407) does not require that the discharger act 'willfully and knowingly.' As the court wrote in *U.S.* v. *U.S. Steel Corp.*, 328 F. Supp. 354, 356 (D.C., N.D., Ind. 1970): 'The public is injured just as much by unintentional pollution as it is by deliberate pollution and it would have been entirely reasonable for Congress to attack both.'

"The Committee believes that the same reasoning applies to cases under section 10 of the River and Harbor Act of 1899. Therefore, *scienter* should not be an element in the decision to prosecute."

The Corps' proposed regulations disregard our objections. Section 209.120(e)(12)(i) specifies that when a district engineer learns of an illegal act, "he shall immediately inform the responsible person of the need for a permit and order him to stop any further work." The district engineer must then "instruct" that law violator to "file immediately an application for a permit," and then the district engineer "will determine if immediate legal action is warranted." Section 209.120(e)(12)(ii) then specifies that applications for after-the-fact permits will be

processed and evaluated in the same manner as other applications. Indeed, section 209.120(p)(2), which lists the type of cases that the district engineers must forward to the Division Engineer or to the Chief for review and resolution, does not refer to applications for after-the-fact permits. They are not considered special cases. They are handled routinely.

We believe that the decision of the U.S. Court of Appeals for the Fifth Circuit in *United States* v. *Joseph G. Moretti, Inc.*, Civ. No. 71-3137, May 15, 1973, clearly demonstrates the undesirable effects of allowing those who violate the law to have their after-the-fact applications treated like the applications of those who comply with the law. In that case, the Moretti Company blatantly disregarded the law and the Corps' orders not to dredge and fill in navigable waters. The Government then obtained an injunction requiring the company to stop further work and to undo the damage the company had already done. The Court of Appeals ruled that such injunctive orders were fully authorized by law and within the District Court's power to issue. However, the Court of Appeals vacated the order to undo the damage because the Corps' current after-the-fact permit regulations, which are in substance the same as in the May 10 proposed regulations, gave the company "a right to file the application and have it processed in accordance with those regulations," and the Corps "had the duty to process Moretti's application." (p. 14).

The Corps' regulations, not Congress, established this "right" and "duty." The statute (33 U.S.C. 403) prohibits all work in navigable waters, except as authorized by the Corps. Indeed the 1899 statute does not even contemplate after-the-fact authorizations, in the case of dredge and fill activities, because it specifies that such work must be authorized "prior to beginning the same." But the Corps has ignored this provision of the law and, in the past, adopted a procedure to authorize such work after "beginning the same." The May 10 regulations would continue this administrative practice, despite the plain language of the law. The Moretti decision shows that this administrative engraftment on the law impairs the Corps' ability to obtain prompt legal redress against egregious violations in waterways, notwithstanding the provision in the proposed section 209.120 (e)(12)(ii) that "the processing of an application for an after-the-fact authorization will not be a bar against subsequent legal action as may be determined appropriate."

We therefore repeat our request that the Corps abandon this unlawful "after-the-fact" regulation guaranteeing a "right" to an alleged violator to apply for permit to legalize unlawful acts. In lieu of this procedure, the Corps should make it clear that:

1. Illegal acts will be recommended for criminal prosecution;
2. Civil suits will be filed (i) to halt illegal work, if the alleged violator fails to obey immediately the Corps' stop order; and (ii) to require, where appropriate in the Corps' judgment, the restoration of the water area to its earlier condition.

The Corps, without specifying an after-the-fact permit application, can always enter into consent agreements whereby the Corps could legalize the unlawful work as part of any of the above proceedings if the Corps, in consultation with other interested Federal agencies, the States, and the public, determines that such work is in the public interest. But this should be handled on a case-by-case basis at the Division Engineer level, at least.

II. Referral of Cases to U.S. Attorneys

Ths House Committee on Government Operations, in its report of August 10, 1972, *supra*, recommended that (p. 26):

"The Corps of Engineers and the Department of Justice should authorize direct referral, by district engineers to U.S. attorneys, of fill, dredge or construction activities which are alleged to have violated section 10 of the River and Harbor Act of 1899, similar to the direct referral procedure now used for illegal discharges under section 13 of the same act (the Refuse Act)."

On several occasions beginning last September, you and your staff assured us that the Corps intends to modify its procedures in conformity with the Committee's recommendation when the regulations were issued. We therefore waited patiently for these regulations. But now we are dismayed to find that the proposed regulations, instead of changing this procedure, would lock in the present procedure so that any future change would require the Corps to go through another rule-making effort which will involve the Office of Management and Budget in order to change the regulations. This is shown by section 209.120(e)(12)(i), which specifies that if the person doing the illegal work "does not comply with the district engineer's instructions" to halt such work, or if "the district engineer deter-

mines that immediate legal action is warranted," then the district engineer must refer the matter "by the most expeditious means" to the Corps' General Counsel in Washington; and by section 209.120(e)(12)(v), which states that if the after-the-fact applicant "declines to accept the conditions of the permit, or fails to take corrective action prescribed in the notification of denial," the district engineer must also refer the matter to your General Counsel in Washington "for appropriate legal action."

In testimony before our Subcommittee in Florida, on May 25, 1973, U.S. Attorney Robert Rust said:

"There has been some delay in the filing of civil and criminal matters by my office due to the Corps of Engineers referral policy.

". . . we do advocate direct or concurrent referral to my office.

"I also understand that the Department of Justice has no objections to the direct referral of Section 10 cases, and will change its procedures at such time as the Corps of Engineers alters its regulations."

We request that you promptly change your referral procedures and reflect that change in these regulations when they are finally promulgated.

III. Wetlands Policies

Recognizing the importance of wetlands, the Environmental Protection Agency, the Bureau of Sport Fisheries and Wildlife, and the Corps have recently adopted new wetland protection policies. Their policies, however, are substantially different as shown by the following comparison of some of their major provisions:

BSF&W Southeastern Regional Guidelines of Oct. 1971

Re Permit Applications for work in Wetland and Estuarine Areas

To gain BSF&W support for permits, applicant must show that——

(1) proposed work (which affects estuarine and wetland area) is water-related or water dependent;

(2) no alternative upland sites are available; and

(3) there is an overall public need.

In general BSF&W does not consider "acceptable" the following uses of public waters and wetland areas:

(a) restaurants and businesses;
(b) residences, apartments, motels, hotels, and trailer parks;
(c) parking lots and offices;
(d) spoil and dump sites;
(e) sewage, waste, or industrial lagoons;
(f) public and private roads and highways;
(g) small boat storage sites; and
(h) factories.

(Note.—A similar Bureau-wide version of these guidelines is printed in Part 5 of our hearings on Stream Channelization at page 2989).

EPA's Wetlands Policy Statement of February 1973 (38 F.R. 10834; May 2, 1973) re Pollutants and Construction Activities in Wetlands

It shall be EPA policy to:

(1) minimize alterations in the quantity or quality of natural flow of water that nourishes wetlands; and

(2) protect wetlands from adverse dredging or filling practices, solid waste management practices, siltation, etc.

These policies will be applied when EPA considers whether to recommend against the issuance of a Corps permit.

Corps' Proposed Wetlands Policy of May 10, 1973 (38 F.R. 12217) re: Permit Applications

No permit will be granted in wetlands unless the district engineer concludes that the benefits of the proposed work "outweigh" the damage to the Wetlands resource and the proposed work "is necessary to realize those benefits."

Essentially, the Corps' policy leaves unfettered discretion with the District Engineer to issue permits allowing construction, dredging, or fill work in many wetland areas. We fear that it may result in District Engineers finding that "economic benefits" outweigh the intangible wetland values, and the wetlands will be destroyed.

A previous draft of these Corps regulations, dated January 1972—like the BSF&W guidelines—provided that if the work "is not dependent on waterfront access," or if the use being sought "can be satisfied" either by an alternate site or by existing public facilities, the permit application "will ordinarliy not be granted."

These substantial differences in policies can only confuse the public. They must be reconciled now. The Corps and EPA should adopt the sound and straightforward policy of the Bureau of Sport Fisheries and Wildlife.

IV. Requiring that the Applicant Prove Affirmatively that Work is in the Public Interest

Our Committee, in its August 10, 1972 report, *supra*, recommended (p. 9):

"The Corps of Engineers should promptly revise its regulations, as previously recommended by this committee, to require that applicants for permits under section 10 of the 1899 River and Harbor Act affirmatively show that the proposed work is in the public interest.

"Such requirement would enhance the protection of our valuable wetlands, would reduce government expenditure of time and money in giving proper consideration to the application, and reduce lengthy delays for the applicant."

The Committee made the same recommendation in its report (H. Rept. 91–917; March 8, 1970) entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution." However, the Corps' May 10 proposed regulations ignore this recommendation.

The importance of the Committee's recommendation is illustrated by the Corps' action in connection with the 4 dredge permits issued to the ITT Levitt Corp., now know as ITT Community Development Corp., "for connections of upland canals to the Florida Intra-coastal Waterway (plug removals)" for ITT's Palm Coast subdivision. The Corps' letter to us of May 21, 1973 noted that these permits—one issued in February 1970, and the other three in December 1970—were "routinely" issued because (a) the ITT application did not reveal "the extent of the upland canals"; and (b) the Corps' public notices "did not generate any substantive objections" from anyone. Our review of the Corps' file concerning these permits shows that neither the applications nor the Corps' public notices provided much information about the proposed work, or gave any inkling of the many miles of canals to be connected. Nor did the Corps conduct any investigation of the permit applications, or require the applicant "affirmatively" to prove that the applications were in the public interest. Instead, the Corps relied on the public and other Federal agencies to object, and when they didn't, the Corps "routinely" issued the permits. Only much later did the Corps begin to question the legality of ITT's placement of "plugs" in the St. Joe Canal and the propriety of its work in connection with "nine additional dredged entranceways" to a navigable waterway.

We request that the proposed regulations be revised to comply with our Committee's recommendation of 1970 and 1972. We also request that you inform each district engineer that the Corps, whether or not the public objects to a permit application, has an obligation under the law to satisfy itself, through an on-site investigation, if necessary, that the work is, in fact, in the public interest.

V. General Policies for Evaluating Permit

Section 209.120(f)(1) of the proposed regulations states that the "decision" whether to issue a permit, and, if so, what conditions should be imposed, are "determined by the outcome of the general balancing process (e.g. see ER 1105–2–105, Guidelines for Assessment of Economic, Social and Environmental Effects of Civil Works Projects)."

The document referred to was issued on December 15, 1972, to each Corps office pursuant to section 122 of Public Law 91–611. It has never been published in the Federal Register, either for public comment or otherwise. It applies to civil works projects conducted by the Corps. However, there is no indication therein or in Public Law 91–611 that it was also to be applied to the Corps' permit activities. Indeed, it is quite inappropriate for this purpose.

We request that the reference to this document be striken from the regulations, at least until the Corps provides an opportunity to the public to review it and its relationship to the permit program and to comment thereon.

In this regard, we note that on June 11, 1973, the Florida Department of Pollution Control sent a wire to you stating:

"As a policy matter we recommend that in the balancing test set out in (f), greater weight be given to the public interest and the protection of resources than to the private benefit or utilization of the resources."

We concur with the Florida Department's recommendation and urge that it be reflected in the regulations.

If, for any reason, you do not make the changes recommended herein, please provide to us your reasons for not doing so.

Please provide to us a copy of all comments received by the Corps concerning the proposed regulations of May 10.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.
GUY VANDER JAGT,
Ranking Minority Member, Conservation and Natural Resources Subcommittee.

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 10, 1973.

Mr. FRED J. EMERY,
Director for Federal Register,
National Archives and Records Service, Washington, D.C.

DEAR MR. EMERY: On May 10, 1973, the Corps of Engineers published in the *Federal Register* several pages of proposed regulations (38 F.R. 12217).

In commenting on the substance of those regulations in our letter of July 5 to the Corps, Congressman Vander Jagt and I said:

"Several provisions of these proposed regulations give us concern. But before commenting on the most significant of these provisions, we want to express our strong objections to the cumbersome, confusing, and nearly unintelligible numbering and lettering system used in these regulations, which, in one section, includes over 150 subsections, paragraphs, subparagraphs, and sub-subparagraphs. Is it really impossible for the Corps, perhaps with the cooperation of the Office of the Federal Register, to devise a better and less burdensome numbering system than is used in these regulations? We urge that these regulations be given a simpler numbering system before they are promulgated finally so that the public, as well as the bureaucracy, can understand them."

We request that you cooperate with the Corps in jointly devising a simpler and more intelligible numbering system. We request that this be done promptly so as not to result in any delay in the final promulgation of these needed regulations.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 13, 1973.

Hon. HENRY S. REUSS,
House of Representatives, Washington, D.C.

DEAR MR. REUSS: Thank you for your letter of July 10, 1973, in which you asked our cooperation with the Corps of Engineers in devising a better numbering system for their proposal published on May 10, 1973.

We are on the record as advocating short, simple sections and we are now actively involved in a program to improve the quality of documents published in the *Federal Register*. Our recently revised Handbook on Document Drafting is enclosed for your inspection. On page 16738 we state, "Each section should be drafted as a short, simple presentation of one principal regulatory proposition."

We assure you that we will cooperate without delay with the Corps of Engineers in jointly devising a simpler and more intelligible numbering system.

We share your interest in improving the usefulness and understanding of documents printed in the *Federal Register*.

Thank you for the active role you and Congressman Vander Jagt are taking in this matter.

Sincerely,

FRED J. EMERY,
Director of the Federal Register.

Enclosure.

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 13, 1973.

Hon. HOWARD H. CALLAWAY,
Secretary, Department of the Army,
The Pentagon.

DEAR SECRETARY CALLAWAY: Enclosed is a copy of our Subcommittee's letter of July 5, 1973 to the Corps of Engineers concerning that agency's proposed regulations of May 10, 1973 (38 F.R. 12217) governing the issuance of permits for work in navigable waterways. We have not, as yet, received a reply to our letter, although on July 18 the Corps provided to us a copy of all other comments received thus far by the Corps concerning the proposed regulations.

To our knowledge the Corps has not finalized these regulations and promulgated them in the *Federal Register*. However, we have just received a copy of an undated news release (copy enclosed) issued by the Philadelphia District Engineer's office which states that the "rules governing permit applications for work performed in American waterways have been changed." The release cites the regulations published "for comment" on May 10 and then concludes that "they became effective as of mid-June 1973."

The preamble to the May 10 proposed regulations does not mention any such "effective" date. Indeed, it quite properly states that: "Prior to adoption of the proposed regulation consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing" to the Corps. Many of the comments received by the Corps, particularly those of Federal agencies, are dated after the so-called "effective" date of "mid-June."

That preamble also contains the following paragraph:

"Until final regulations are promulgated by the Secretary of the Army (acting through the Chief of Engineers) these proposed regulations will provide interim guidance to all Corps of Engineers installations on the processing of permit applications."

We, however, did not on July 5 or today construe this paragraph to mean that the regulations are "effective" as of "mid-June 1973." In fact, we think it is of questionable value. While the proposed regulations may provide some "guidance" to the Corps officials, they are not legally binding on anyone or enforceable until they have been "adopted" finally by the Corps and the current regulations have been repealed. Indeed, to the extent that these proposed regulations differ with corresponding provisions of the current regulations they will probably cause some considerable confusion.

We would appreciate your reviewing this matter and advising us, by August 27, 1973, whether or not the regulations are "effective" as of mid-June 1973. If they are, please provide to us a copy of the document which set that effective date and explain to us why the Corps did not give "consideration" to the written comments of our Subcommittee and others. If they have not been finalized, which we presume is the case, please explain to us the basis for the enclosed news release.

As you know, our Subcommittee has corresponded with your Office and the Corps for many months urging publication of these regulations. When the proposed regulations were published in May for public comment, we applauded that action even though, as our July 5 letter notes, we objected to certain features therein. Since more than 90 days have passed since publication of the proposed regulations, we would appreciate your informing us as to when the Corps will promulgate them finally with our recommended revisions. We hope that they will not be delayed beyond September 1973.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

[News Release]

U.S. ARMY, CORPS OF ENGINEERS

Philadelphia—The rules governing permit applications for work performed in American waterways have been changed, according to the U.S. Army Engineers' Office in Philadelphia. These revisions were made to comply with recent legislation designed to protect the public interest and to insure that the environmental aspects of any proposed work be properly considered before a future permit is issued.

Under the new regulations, the Corps of Engineers permit program applies to virtually every U.S. waterway, including waterways used for any type of interstate commerce whether or not they support commercial navigation. Also included are tidal waters and the oceans.

The principal changes in the permit program reflect new Corps policies that have evolved since the enactment of the 1969 National Environmental Policy Act and 3 other environmentally oriented Water Management Acts passed in the United States Congress.

This new outlook will consider the cumulative effect of any wetlands alterations recognizing the wetlands are essential for food chain production and nesting, spawning and rearing sites for waterfowl, fish and other forms of wildlife as well as important flood storage areas.

The revised program also embraces all residential development canals that are connected to navigable waterways whether that connection is effected before or after construction of the canal.

Permit applications for placing fill or dredged material into navigable waters or the transportation of dredged material for dumping in the oceans will now he reviewed in accordance with guidelines developed by the Administrator of the Environmental Protection Agency and the Secretary of the Army.

The engineer office also indicated that a fee of $10 will now be charged for processing permit applications that cover disposal of less than 2,500 cubic yards of material into navigable waters or that cover transportation of an equal amount of dredged material for dumping in the oceans. A processing fee of $100 will be charged for any application involving more than 2,500 cubic yards. These fees are designed to cover the administrative costs in processing the permits and will be reviewed periodically.

These revisions were published May 10, 1973 in the federal register for comment and they became effective as of mid-June, 1973.

DEPARTMENT OF THE ARMY,
Washington, D.C., August 27, 1973.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources,
Washington, D.C.

DEAR MR. REUSS: On behalf of Secretary Callaway I am replying to your letter dated 13 August 1973 concerning proposed regulations for permits for activities in navigable waters and ocean waters which were published in the *Federal Register* on 10 May 1973 (38 FR 12217).

I am advised that the Corps of Engineers is still evaluating the comments received in response to the proposed regulations but anticipates finalizing and publishing them in the near future. As noted in our 27 July response to your letter of 5 July, I am assured by the Corps that your Committee's comments will be very carefully considered in drafting the final form of these regulations.

Concerning the Philadelphia District press release, that office thought the proposed regulations were finalized in mid-June 1973 and issued the press release which you received. I am told that the District has been advised to issue an amended press release to explain that the proposed regulations are still under review. I regret the confusion caused by the inaccurate release but believe the amended document will eliminate any misunderstandings.

Thank you for your continued interest in this important program.

Sincerely,

CHARLES R. FORD,
Chief, Office of Civil Functions.

Mr. FASCELL. If I call a few cases to you for consideration when you get back to Washington, would you apply the rule that you just stated?

You have a matter in the Chief's office right now on which this very question rests: that is, whether you are going to process the after-the-fact application before you send the matter to Justice, where it already is, to prosecute some individual who allegedly is in violation.

Mr. LANKHORST. The case is less than 2 weeks old. We have recognized its significance and impact, and I believe the case you have in mind is a prime example of this; yes.

Mr. FASCELL. All I am interested in is the equal application of the rules. That is all. I make no brief for anybody. If you are going to lower the boom, lower the boom on everybody.

Mr. LANKHORST. We agree.

Mr. FASCELL. All right.

Mr. Gude?

Mr. GUDE. Yes.

I would like to pursue this just a little bit more. In the comments by the Department of the Interior, you state in response to question 6 that the corps districts in the southeast region normally provide the Bureau of Sport Fisheries and Wildlife an opportunity to comment on the majority of such projects, and in most instances project plans are formulated 12 to 18 months prior to construction activities. However, the Bureau comments, or generally makes requests, only a few months or weeks prior to the construction date, thereby making it difficult for the Bureau to investigate or make comments to the corps in a limited time frame.

Do you develop construction plans, Colonel?

When do you ask the Bureau of Sport Fisheries for their comments?

Colonel LEE. Sir, we are governed, if nothing else, by the National Environmental Policy Act that requires us in our projects to develop environmental impact statements that are coordinated through the other Federal, State, and local agencies extensively, concurrent with the authorization of the project. That is not to say that some of the older projects and continuing projects which were in progress before the passage of the National Environmental Policy Act have been handled in that way. We are still providing impact statements, which is really a tremendous chore for the corps, considering all of the work involved. By virtue of that law, we are required to coordinate our work with these other agencies.

Of all the work that we do in the Jacksonville area, I would like some more specifics to comment on relative to this statement.

Mr. GUDE. What I was asking went specifically to the amount of time that you give the Bureau of Sport Fsheries and Wildlife to comment on project plans.

Colonel LEE. I do not know which project is involved, sir.

Mr. GUDE. We are talking in general about project plans.

Colonel LEE. In general, I do not think we are guilty of that. I would say I would like some specific comments about a project in order to provide an answer to that.

Mr. GUDE. It would seem, in the case of Pensacola Harbor, that if the corps had known about these objections ahead of time, it could have developed plans to properly dispose of the spoil upland, and there would not have been this urgency.

I gather, even though we only have the comments of one individual from the licensing department or the permit division in Mobile, that there was some urgency in carrying out this dredging quickly.

I wonder, does the gentleman who represents the Mobile district know what was the urgency that required that this project be completed so quickly.

Mr. STEVENS. No, sir.

Mr. GUDE. I guess we will just have to wait for the detailed response which they have indicated they will give us on this.

Mr. FASCELL. Any other questions?

Mr. Finnegan?

Mr. FINNEGAN. Thank you, Mr. Chairman.

First, Mr. Rust, in the Justice Department guidelines that you attached to your statement—I believe they are dated January 18, 1973, and signed by Mr. Frizzell, who was then the Assistant Attorney General—on page 1 it states that you cannot use the Refuse Act against persons who obtain a permit and violate the terms of that permit. You are limited to actions based on the Federal Water Pollution Control Act of 1972, and then only at the request of EPA.

Is it a policy that you cannot use the Refuse Act, or is somebody interpreting this statute that that is the case?

Mr. RUST. I believe that is located, Mr. Counsel, at page 68 of Public Law 92–500, right in front of me. It refers to this particular issue.

Mr. FINNEGAN. Yes, sir. But that applies only to situations where permit applications are pending. Therefore you cannot use the Refuse Act against the discharger through December 31, 1974.

Mr. RUST. Maybe I did not understand your question.

Mr. FINNEGAN. The last sentence of the first page of the guidelines states that after permits are issued, and there are violations of the permit conditions, you can file suit against the polluter, but such actions shall be based upon the Federal Water Pollution Control Act Amendments of 1972, not upon the Refuse Act. There is nothing in the 1972 statute that directs you to file under that act.

Mr. RUST. I would have to research that.

Mr. FINNEGAN. Would you do that and file an answer with the committee?

[The information referred to is printed at pp. 2211–2226.]

Mr. RUST. I did not write the guidelines.

Mr. FINNEGAN. I am sure you did not.

Ms. Whelan, you have with you Mr. Crowder. Are you familiar with the Donaldson Engineering Co. permit application?

Mr. CROWDER. Yes, I am.

Mr. FINNEGAN. Did you recently have a telephone conversation with the Corps of Engineers' Jacksonville office regarding this permit application?

Mr. CROWDER. Yes, I did.

Mr. FINNEGAN. Could you tell me what the application is for and what the substance of the conversation was?

Mr. CROWDER. This application came to us as a letter of permission or class C in format. The application was a proposal to install approximately 6,400 feet of bulkheading in a dead end canal system. The dead end canal system was connected by one or two other canals to the new river canal in Plantation, Fla. The particular canal system had been constructed, and construction had terminated on the system itself—except for bulkheading—in approximately November or December of 1972.

Mr. FINNEGAN. When you say "construction had terminated," did you mean that the connection to the navigable water was made?

Mr. CROWDER. It was our understanding, in talking with the applicant and the Corps of Engineers, that the connection with the navigable waterway had been made, that all the excavation of this canal system had been completed. All that was lacking was the installation of bulkheads.

Mr. FINNEGAN. To your knowledge, was a permit application ever filed with the corps and notice issued regarding that connection?

Mr. CROWDER. Did the applicant for the bulkheading have a prior permit for the excavation?

Mr. FINNEGAN. Yes.

Mr. CROWDER. To our knowledge, he did not. A review of our files disclosed no such application.

Mr. FINNEGAN. What happened in your telephone conversation?

Mr. CROWDER. We discussed this with a member of the Jacksonville permit staff. He indicated to us that he was aware that the canals were unpermitted. We asked why there was no after-the-fact permit application being circulated for this system. His response was that this was one of those cases which was an alleged hardship case.

Mr. FINNEGAN. Do you know what the hardship was?

Mr. CROWDER. The particular contractor, Mr. Donaldson, whom I understand, from talking with Mr. Donaldson himself, has been doing work in this particular area—or at least the general locality—for some 20 years. The hardship is the usual hardship, or alleged hardship, that we are confronted with in that the developer has invested a large amount of money in construction; that apparently, without being able to bulkhead the system, it will not be as attarctive a product to his potential clientele as it would be otherwise. Also, should he be required to apply for an after-the-fact permit for this completed and unpermitted work, in all likelihood according to the Corps of Engineers, he would not be able to obtain the required certification from the department of pollution control that he should have, and the corps would not be able to issue a permit.

Mr. FINNEGAN. Colonel Lee, are you familiar with this case?

Colonel LEE. I am not familiar with that. I will have to respond to that after I have conducted an investigation.

Mr. FINNEGAN. Would you review the record and provide us an answer as to why no permit was required of the applicant and no action taken against him for the apparently illegal dredging?

Colonel LEE. Yes, we will.

[The data referred to follow:]

May 1, 1973

Miss June Whelan
Field Representative, Southeast Region, USDI
404 Financial Services Building
148 Cain Street, NE.
Atlanta, Georgia 30303

Wathen

Dear Miss Whelan:

The Bureau of Sport Fisheries and Wildlife has reviewed the notice of application received from the Jacksonville District, Corps of Engineers, SAJSC 73-0284, dated March 26, 1973. The applicant, Donaldson Engineering Company, has requested a Department of the Army permit to install approximately 6,500 feet of bulkhead in an existing dead-end upland canal system. The project is located adjacent to the North New River Canal, Broward County, Florida. Our comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

It is our understanding that construction of the developer's canal system was completed in 1972 without the benefit of a Department of the Army permit. We were further informed, in discussions with the staff of the Jacksonville District Office, that the Corps has decided not to initiate any legal or administrative action with regard to this existing unpermitted work. This decision effectively precludes opportunity for this Bureau to comment, in accordance with provisions of the Fish and Wildlife Coordination Act, on the impact of the existing excavated canal system upon fish and wildlife. Our comments upon this application are therefore necessarily limited to consideration of the impact of the proposed bulkhead installation. We point this out to avoid any inference of sanction for this method of avoiding the provisions of the River and Harbor Act of 1899.

An inspection of the applicant's project site by a biologist from this Bureau revealed that the proposed bulkhead installation will have insignificant effects on fish and wildlife. Therefore, we have no objection to the issuance of a permit for this work.

Sincerely yours,

/s/ Jack E. Memphill

Deputy Regional Director

Enclosure
Application dtd. 3/26/73

20-733 O - 73 - pt. 1A - 15

BUREAU OF SPORT FISHERIES & WILDLIFE — Region 4
809 Peachtree Seventh Building — Atlanta, Georgia 30323

TELEPHONE CALL

DATE: April 25, 1973 HOUR:

Station Placing Call: John P. Crowder, DRBS

Station Called: Jacksonville District Corps Office

SUBJECTS DISCUSSED AND INSTRUCTIONS ISSUED: SAJSP 73-0284, (Donaldson Engineering Co.) - Letter of Permission

We discussed with Mr. Goode the fact that the subject permit application relates to work proposed in a recently constructed unpermitted canal system. Mr. Goode stated that he was aware the canals were unpermitted. He said the Corps had decided not to prosecute the applicant for the violation. He further stated that the Corps had decided not to require the applicant to obtain an after-the-fact permit for the existing work, since the Florida Department of Pollution Control would not certify the after-the-fact work and without certification the Corps could not issue the permit.

Mr. Goode said that he felt our inquiry into the matter of whether this developer is registered with the Office of Interstate Land Sales Regulation seemed to him to be an area that we should not be getting into. He said that his office had all it could do to handle its permit load trying to keep up with all the other Federal laws.

John P. Crowder

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

SAJSC Permits (73-0284) 26 March 1973

Regional Director, S. E. Region, U.S.D.I.
Bureau of Sport Fisheries & Wildlife
809 Peachtree - 7th Building
Atlanta, Georgia 30303

Dear Sir:

Reference is made to above numbered application for a Department of the Army permit. The proposed construction, as shown on inclosed print, is considered to be minor work.

We have no objections to the proposed work and plan to issue a letter-type permit without public notice two weeks from the date of this letter. Should your agency have objections to this procedure, please so inform us, with reasons therefor, prior to that date.

Sincerely yours,

B. N. GOODE
Chief, Permits & Statistics Branch

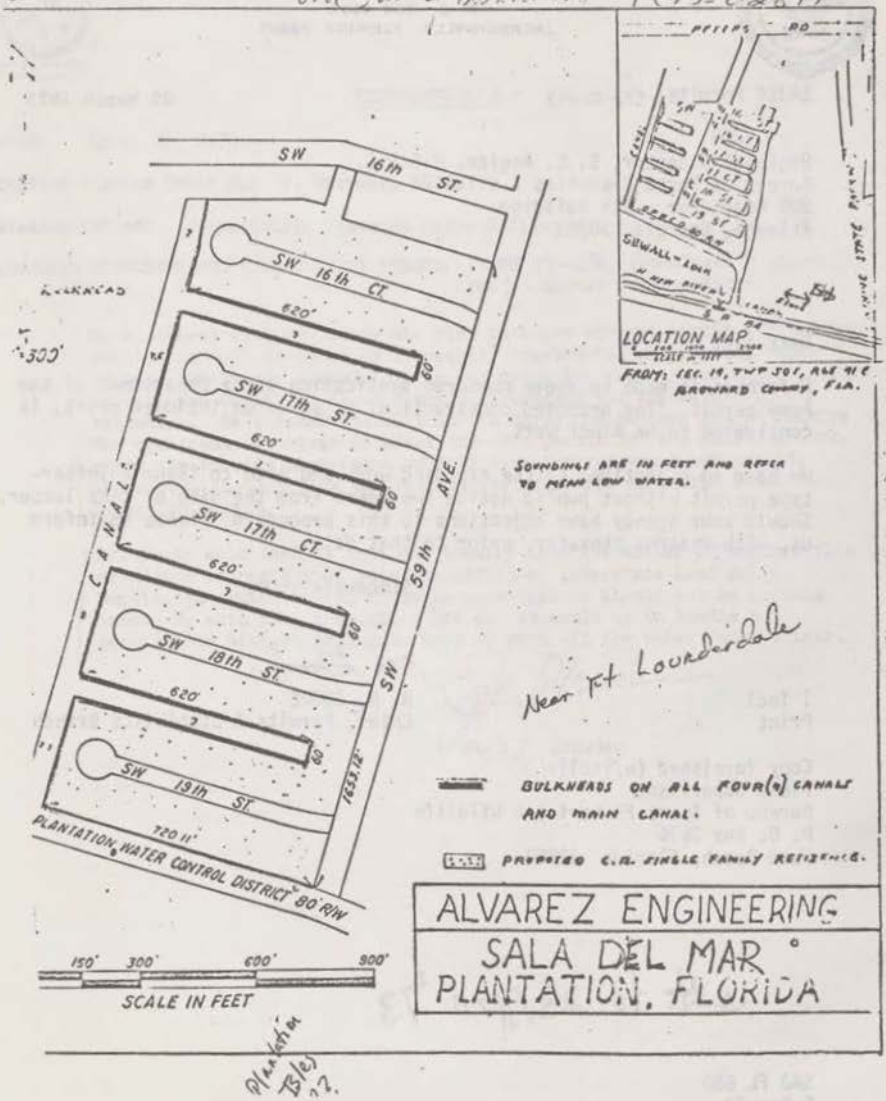
1 Incl
Print

Copy furnished (w/incl):
Field Supervisor
Bureau of Sport Fisheries & Wildlife
P. O. Box 2676
Vero Beach, Florida 32960

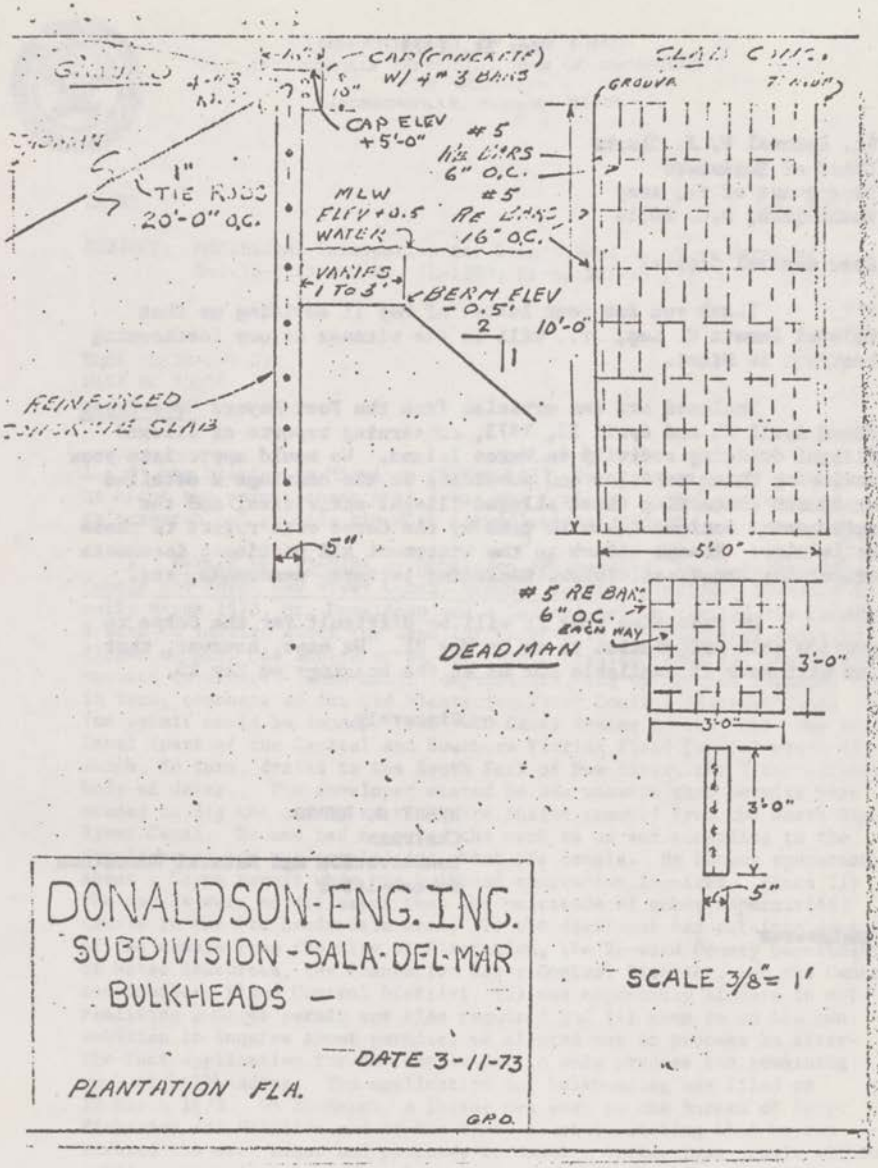
ext. to 23 April '73

SAJ FL 580
6 Dec 72

2400' of canals
over 5000' of bulkheading P(73-0284)



Plantation B(6) 12.


CAP (CONCRETE) W/ 4 #3 BARS
CAP ELEV +5'-0"
#5 1½ LOOPS 6" O.C.
#5 RE BARS 16" O.C.
MLW ELEV +0.5 WATER
VARIES 1 TO 3'
BERM ELEV -0.5'
2
1
10'-0"
1" TIE RODS 20'-0" O.C.
REINFORCED CONCRETE SLAB
5"
5'-0"
#5 RE BARS 6" O.C. EACH WAY
DEADMAN
3'-0"
3'-0"
3'-0"
5"
DONALDSON-ENG. INC.
SUBDIVISION - SALA DEL MAR
BULKHEADS —
DATE 3-11-73
PLANTATION FLA.
GRD.
SCALE 3/8" = 1'

May 11, 1973

Lt. General F. J. Clarke
Chief of Engineers
Department of the Army
Washington, D.C. 20314

Dear General Clarke:

Thank you for your letter of May 11 advising us that Colonel Emmett C. Leo, Jr., will be the witness at our forthcoming hearings in Miami.

Enclosed are two articles from the Fort Meyers News-Press dated April 21 and April 25, 1973, concerning reports of alleged illegal dredging activity on Marco Island. We would appreciate your reviewing these articles and providing at the hearings a detailed statement concerning these alleged illegal activities, and the enforcement actions taken to date by the Corps with regard to these activities. Please attach to the statement all pertinent documents concerning these activities, including letters, memoranda, etc.

We recognize that it will be difficult for the Corps to provide this information to us by May 21. We hope, however, that you will have it available for us at the hearings on May 25.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Enclosures

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT. CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE. FLORIDA 32201

SAJKS 4 June 1973

SUBJECT: Additional Information for Congressman Reuss -- Permits No. 73-0284 and No. 72-1300, Marco Island

HQDA (DAEN-CWO-N)
WASH DC 20314

1. At the hearing in Miami on 25 May 1973, Congressman Reuss asked me about two permit cases that I was not familiar with but promised to research and provide him with a supplemental report.

a. Permit No. 73-0284 -- Donaldson Engineering, Inc., Bulkheading Canals off North New River Canal, Broward County, Florida. Sometime in early March 1973, Mr. Donaldson and a Colonel Nelson visited the Permits Branch to inquire about the need for permits to bulkhead four existing finger canals. As indicated on the permit drawing (Incl 1), the canals connect to a north-south canal (unpermitted, dug by parties unknown) which, in turn, connects to the Old Plantation Water Control District Canal (no permit could be found). The PWCD Canal drains to the North New River Canal (part of the Central and Southern Florida Flood Control project) which, in turn, drains to the South Fork of New River, the first natural body of water. The developer stated he was unaware that permits were needed to dig the canals as they were thrice removed from the North New River Canal. No one had reported the work to us and according to the developer no one was complaining about the canals. He became concerned about a Corps permit when his bulkhead contractor inquired. Since (1) the canals were no different than the multitude of other unpermitted canals in the Ft. Lauderdale area, (2) the developer had obtained approval of the canals from the City of Plantation, the Broward County Department of Water Resources, the Plantation Water Control District, and the Central and Southern Flood Control District, (3) was apparently sincere in not realizing a Corps permit was also required and (4) came in on his own volition to inquire about permits, we elected not to process an after-the-fact application for the canals but to only process the remaining work of bulkheading. The application for bulkheading was filed on 13 March 1973. On 26 March, a letter was sent to the Bureau of Sport Fisheries and Wildlife and to the State Trustees stating that we considered the work minor and proposed to issue a letter-type permit without public notice in two weeks unless they objected. On 16 April 1973 the

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SUBJECT: Additional Information for Congressman Reuss -- Permits No. 73-0284 and No. 72-1300, Marco Island

State Trustees wrote the developer and told him he would not need permits to maintain the four existing canals. On 5 April, a Fish and Wildlife representative in Vero Beach asked for an extension until 23 April 1973. On 23 April, a Bureau representative from Atlanta called to say they wanted more time to comment since they discovered the development was not registered with HUD. The history of the development, including our reasons for not electing to process an after-the-fact application, was explained in detail to both the Vero Beach and Atlanta representative. On 25 April 1973, Mr. John Crowder of the Bureau's Atlanta office called to state they had no objection to issuance.

b. Permit No. 72-1300 -- Dan B. Cooper, Bulkhead, Intracoastal Waterway, Flagler County. On 3 November 1972, an application was received from Mr. Dan B. Cooper to construct a 221-foot-long bulkhead along the Intracoastal Waterway right-of-way line fronting his property in Flagler County. The letter submitting the application stated "No cutting or filling within the waters of the Intracoastal Waterway will be required to install this proposed seawall." It was known that Mr. Cooper was an officer in the ITT Community Development Corporation although his exact position or title was and still is unknown. In any event, such had no bearing on the handling of the application. A 30-day public notice was issued on 27 November 1972. On 30 November, the Trustees requested that we hold for comments from the State environmental agency. On 22 December 1972, the Bureau of Sport Fisheries and Wildlife asked us to extend the notice period until 29 January 1973. On 23 January, they commented that they had no objection if the applicant pulled back to the mean high waterline. A letter from the applicant stating the location was already at the mean high waterline was sent to the Bureau on 21 February 1973 with nothing further heard from the Bureau. Information available in the District Office verified that the bulkhead does not encroach on the waterway. On 27 February 1973, we received another letter from the Trustees asking us to hold the application until the applicant had completed satisfactory arrangements with them. With boat-wake erosion increasing at the location and having heard nothing further from the Trustees five months after they first asked us to hold up, we elected to issue the permit on 3 May 1973. As a matter of information, we are still holding approximately 160 applications dating back to 1970 at the request of the Trustees.

2. Congressman Reuss' letter of 11 May 1973 to the Chief of Engineers inclosed two articles on Marco Island and asked for supporting data. The two articles from the Fort Myers News-Press refer to two separate incidents in the Roberts Bay permit area; the first involving the Winterberry Waterway and the second, the Arcadia Waterway, and one incident in the McIlvaine Bay area where no permits have been issued. Copies of pertinent correspondence, maps, etc., are attached as requested.

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SUBJECT: Additional Information for Congressman Reuss -- Permits No. 73-0284 and No. 72-1300, Marco Island

a. Winterberry Waterway:

(1) By letter of 1 August 1972, Department of Interior reported a possible violation of the issued Department of the Army permit No. 67-762. They stated that since the issued permit only shows the connection of Winterberry Waterway to Roberts Bay and not the additional upland canals that the extension of said waterway and the excavation and connection of additional canals to said waterway constitutes a violation of Federal law and immediate action is warranted by responsible agencies. Therefore, Department of Interior recommended that we: (1) Issue a cease and desist order to stop this apparently illegal work; (2) Visit the site as soon as possible to verify their findings; (3) Inform the developer of the necessity of obtaining a Department of the Army permit; and (4) Advise Department of Interior and the U. S. Attorney, Miami, Florida, if the activity is legal or if a cease and desist order has been issued.

(2) On 19 October 1972, we answered Department of Interior's letter of 1 August 1972 and furnished a copy of this to the U. S. Attorney, Miami. The following was our answer: "The Marco Island Development Corporation was issued a Department of the Army permit on 18 December 1969 for dredging and filling operations in Roberts Bay and Smokehouse Creek. On 31 July 1970, the Marco Island Development Corporation was issued a modification to their permit for the connection of 27 canals to Roberts Bay and Caxambas Pass. These canals were to remain plugged until excavation of each waterway was completed. At that time we were not requiring applicants to show the full extent of "upland" canals being connected but merely the connection itself to navigable waters. Our inspection of this development on 28 August 1972 revealed that excavation was presently being conducted in Winterberry Canal behind the required plug at Winterberry Drive, and that a "diaper" is being used to control the turbidity on the Bay side of this plug. Based on the above, it is our determination that the permittee is conducting his excavation operations in accordance with the issued permit and that there is no present violation of Section 10 of the River and Harbor Act of 1899."

b. Arcadia Waterway:

(1) By letter of 13 March 1973, Department of Interior reported illegal construction on Marco Island, Collier County, Florida, along the east side of Smokehouse Creek. They stated that a canal had been excavated and connected to said creek and that this canal is apparently unauthorized by a Department of the Army permit. Therefore, Department of Interior recommended that we: (1) Visit the site as soon as possible to confirm their findings; (2) if the developer is found to have violated Federal law by construction of unpermitted work, refer the matter to the office of the U. S. Attorney, Miami, Florida, for appropriate legal action;

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(3) Inform Department of Interior within 7 days of receipt of this letter of the action taken by our office regarding this matter.

(2) Upon review of the Department of the Army permit No. 67-762, it was determined that the 3-lot long Arcadia Waterway was not included with the 27 canal connections shown on the permit drawings. However, in reviewing the files we found that all other drawings including some furnished before issuance of the permit clearly show Arcadia Waterway. By letter of 5 April 1973, Department of Interior furnished us an aerial photograph clearly showing that Arcadia Waterway was connected to navigable waters. Therefore, on 9 April 1973, we directed the Deltona Corporation to place a plug at the connection of Arcadia Waterway and Smokehouse Creek (copy furnished DI). By telegram of 16 April 1973, the Deltona Corporation requested an immediate conference, stated that said waterway connection was included within materials submitted to us but was omitted from the permit drawings through an error, and that all work in or abutting to said waterway connection was stopped. On 18 April 1973, we requested that Department of Interior attend this conference. After a mutually agreeable date was set for the conference, Department of Interior representative advised that they had reported Arcadia Waterway as a violation and feel that they have completed their responsibility in this matter and therefore did not feel it necessary to be represented at the conference.

(3) On 26 April 1973, Deltona representatives met with us to discuss this problem. We concluded that there were three options that we could consider: (1) Plug the canal and apply for an after-the-fact permit; (2) Initiate legal action; or (3) Handle this as an administrative error since all evidence indicates their intention to excavate this small canal. It was concluded that Deltona Corporation will furnish us a letter outlining the situation and at that time we would make our decision. To date a letter has not been received.

c. Tidal Creek - McIlvaine Bay:

(1) By letter of 20 April 1973, Department of Interior reported that a dike had been placed in a navigable tidal creek and dredge and fill operations have been accomplished in the upper reaches of this creek. They further stated that this tidal creek was navigable because their biologist was able to paddle a canoe up the creek to the base of the dike. They recommended that we: (1) Issue a cease and desist order to stop this apparently illegal work; (2) Visit the site as soon as possible to verify their findings; (3) Inform the developer of the necessity of obtaining a Department of the Army permit; and, (4) Advise the Department of Interior and the U. S. Attorney, Miami, Florida, within 7 days of receipt of this letter if the activity is legal or if a cease and desist order has been issued.

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SUBJECT: Additional Information for Congressman Reuss -- Permits No. 73-0284 and No. 72-1300, Marco Island

(2) In searching our files, we located a letter dated 19 February 1973 from Mr. James E. Vensel, Senior Vice President, Deltona Corporation which commented on the above area. Mr. Vensel stated the following: "In the northern area of our property ownership, several miles north of Marco Island and in the upland area north of what is called McIlvaine Bay, is the construction of our 18-hole golf course and a temporary location of a new airfield for the Marco Island community. This area has been carefully surveyed for the accurate location of mean high waterline and additionally studies were conducted to determine the landward influence of tidal penetration. These studies were done and the resulting information was supplied to the Environmental Protection Agency, the TIITF, and the Department of Natural Resources of the State of Florida. The studies verified that there was no tidal influence in the area of our current construction work, therefore indicating that our work was in fact not in the jurisdictional area of the State or Corps of Engineers. If we conduct additional studies in this area or plan additional construction, we will inform your office so that it will be kept currently up-to-date on these activities at Marco."

(3) On 15 May 1973, a representative of the Clewiston office inspected the area in question. This inspection revealed that a dike had been constructed above the upper reaches of the tidal creek, that no filling had occurred in the creek, and that an upland lake was being excavated with no connection to navigable waters. The Clewiston Area Engineer's conclusion was that a violation did not exist. Based on this inspection, the information furnished by Deltona (para 4b), it is presently concluded that a violation does not exist. However, upon further review of aerial photographs, 28 December 1972, furnished by Area Engineer showing location of dike, and 21 January 1971 obtained from office files prior to construction of the dike, it appears that a tributary at the upper reach of the creek may have been filled. Therefore, investigation of this matter is continuing. We have asked Deltona to furnish us additional survey information.

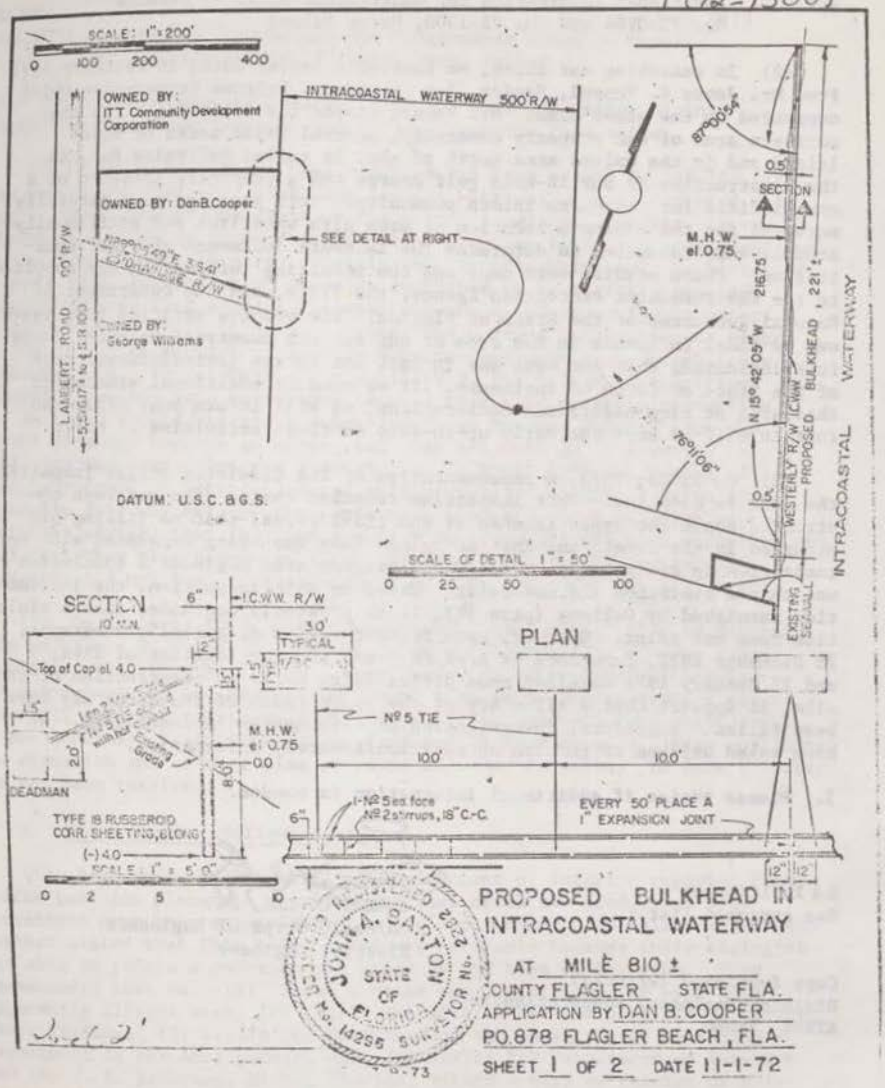
3. Please advise if additional information is needed.

1.4 Incl (dupe)
See attached list

EMMETT C. LEE, JR.
Colonel, Corps of Engineers
District Engineer

Copy furnished (w/incl):
Division Engineer, South Atlantic
ATTN: SADKO

P(72-1300)



PROPOSED BULKHEAD IN INTRACOASTAL WATERWAY

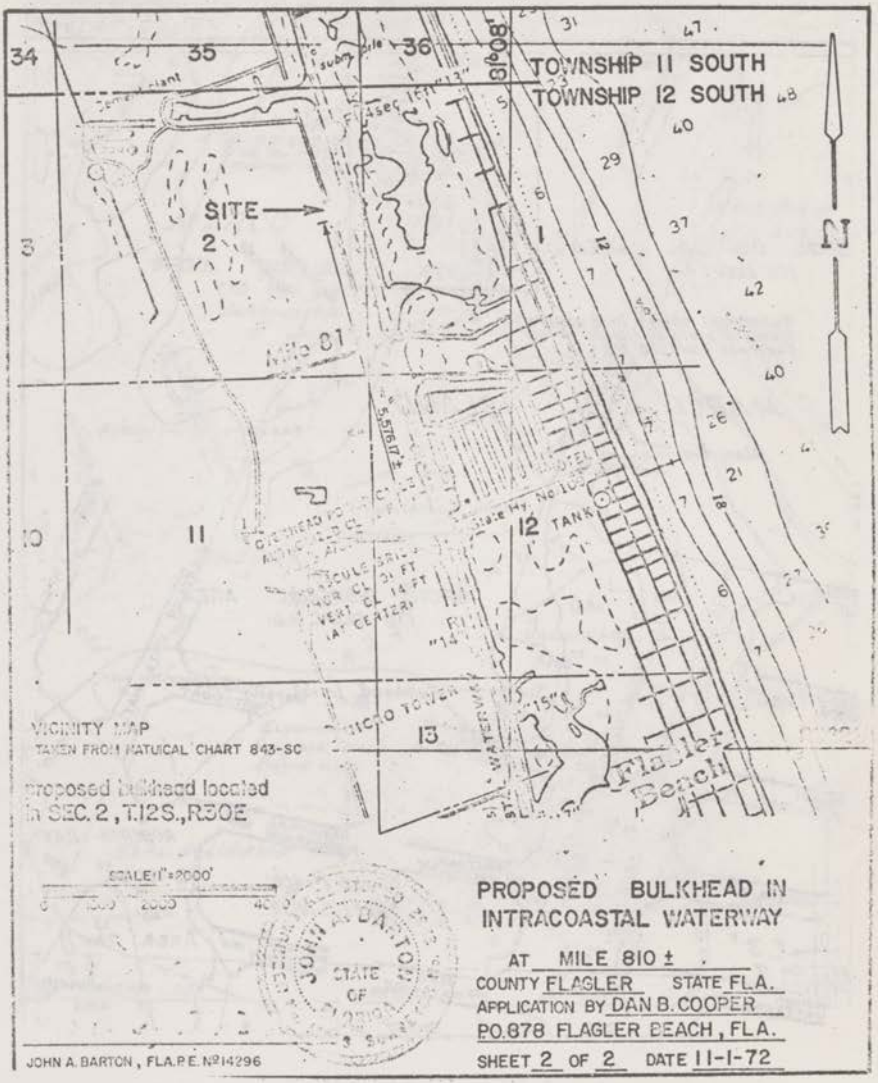
AT MILE 810 ±

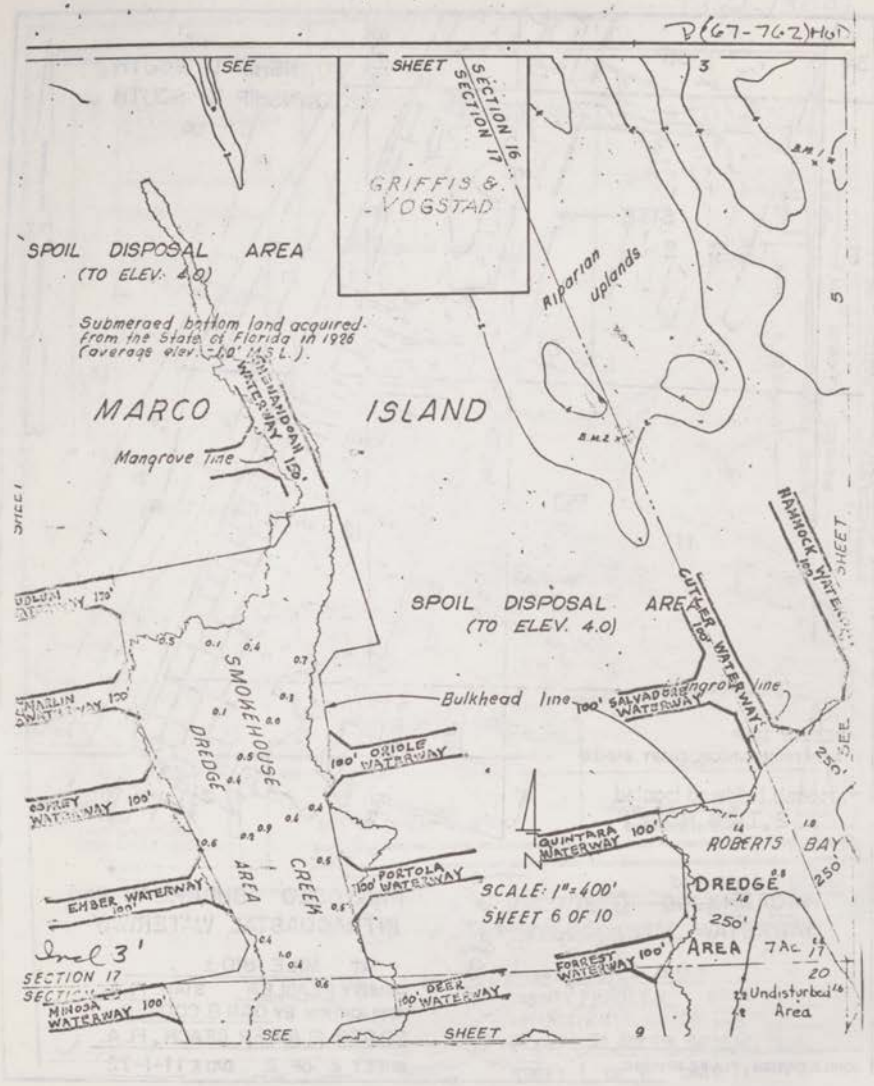
COUNTY FLAGLER STATE FLA.

APPLICATION BY DAN B. COOPER

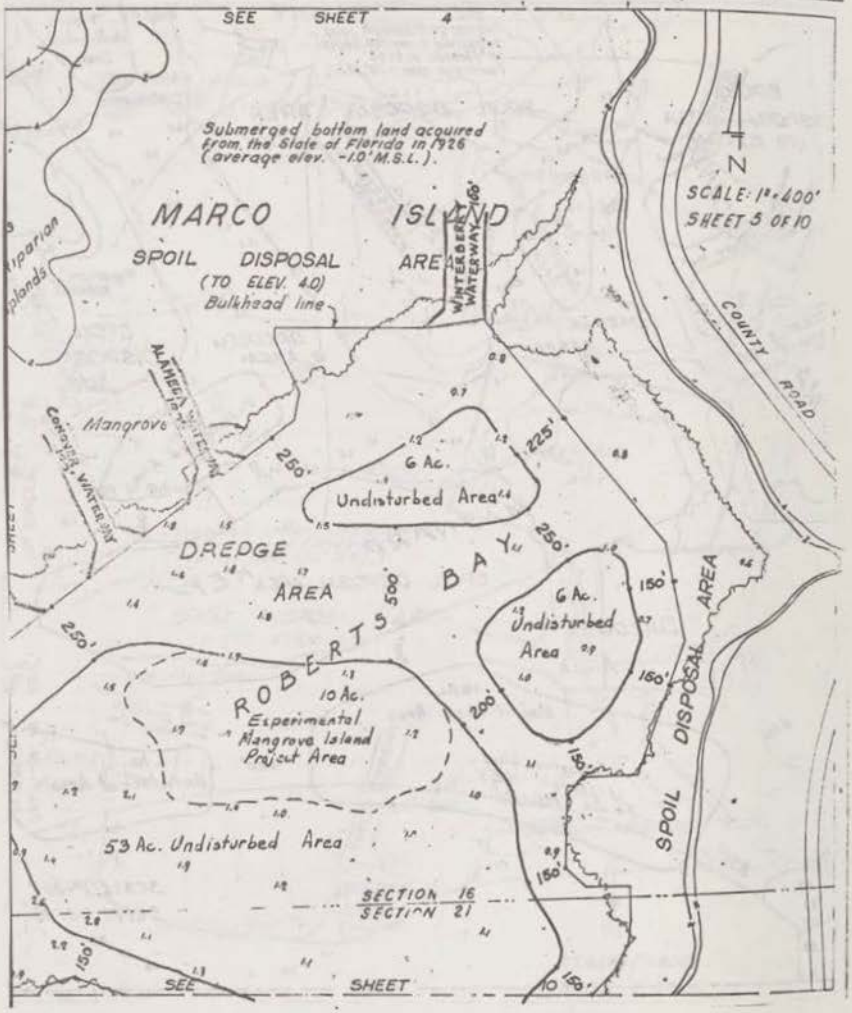
PO. 878 FLAGLER BEACH, FLA.

SHEET 1 OF 2 DATE 11-1-72

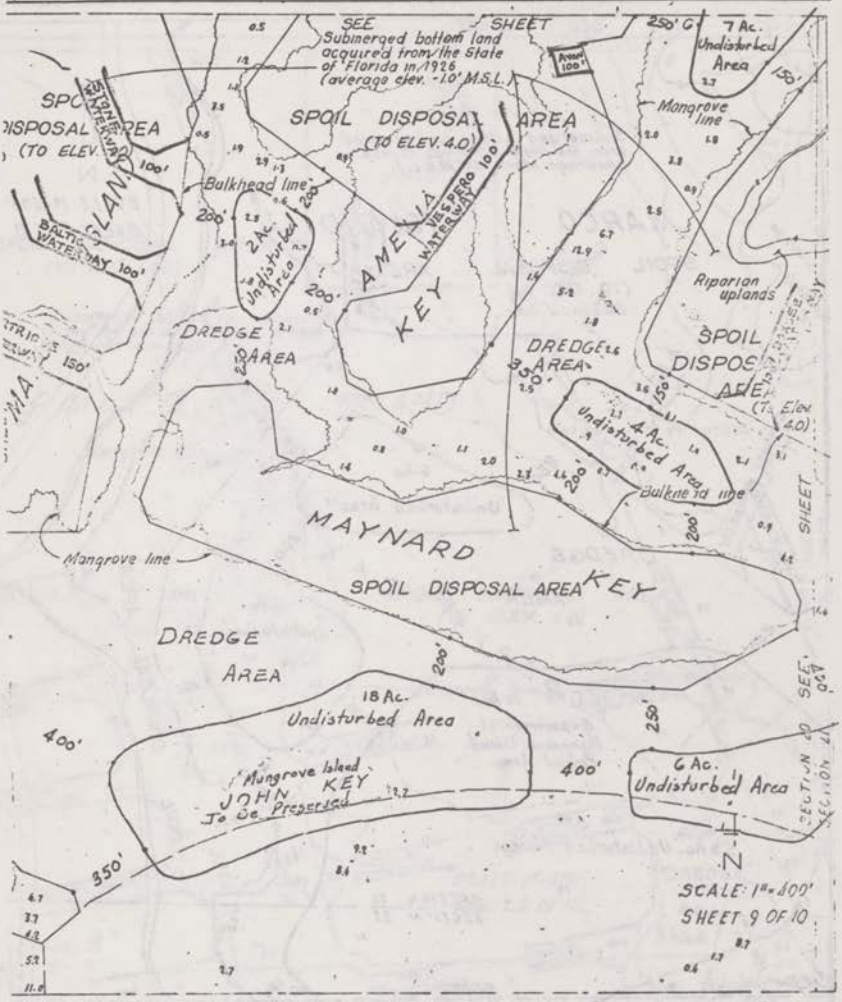

TOWNSHIP 11 SOUTH
TOWNSHIP 12 SOUTH
SITE
2
Mile 81
State Hy. No. 100
TANK
Flagler Beach
VICINITY MAP
TAKEN FROM NATUICAL CHART 843-SC
proposed bulkhead located
in SEC. 2, T.12S., R30E
SCALE 1"=2000'
JOHN A. BARTON, FLA. P.E. №14296
PROPOSED BULKHEAD IN
INTRACOASTAL WATERWAY
AT MILE 810 ±
COUNTY FLAGLER STATE FLA.
APPLICATION BY DAN B. COOPER
P.O. 878 FLAGLER BEACH, FLA.
SHEET 2 OF 2 DATE 11-1-72


D(67-76-2)Hol
SEE SHEET
SECTION 16
SECTION 17
GRIFFIS & VOGSTAD
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -1.0 M.S.L.)
Riparian uplands
B.M.1
B.M.2
MARCO ISLAND
Mangrove Line
HANDOAN WATERWAY 120'
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
Bulkhead line
100' SALVADOR WATERWAY
Mangrove line
CUTLER 100' WATERWAY
HAMMOCK WATERWAY 100'
SMOKEHOUSE CREEK
DREDGE AREA 1
100' ORIOLE WATERWAY
QUINTARA WATERWAY 100'
100' PORTOLA WATERWAY
EMBER WATERWAY 100'
FORREST WATERWAY 100'
100' DEER WATERWAY
MIMOSA WATERWAY 100'
SCALE: 1"=400'
SHEET 6 OF 10
ROBERTS BAY
DREDGE AREA 7 Ac.
Undisturbed Area
SEE SHEET
SEE SHEET

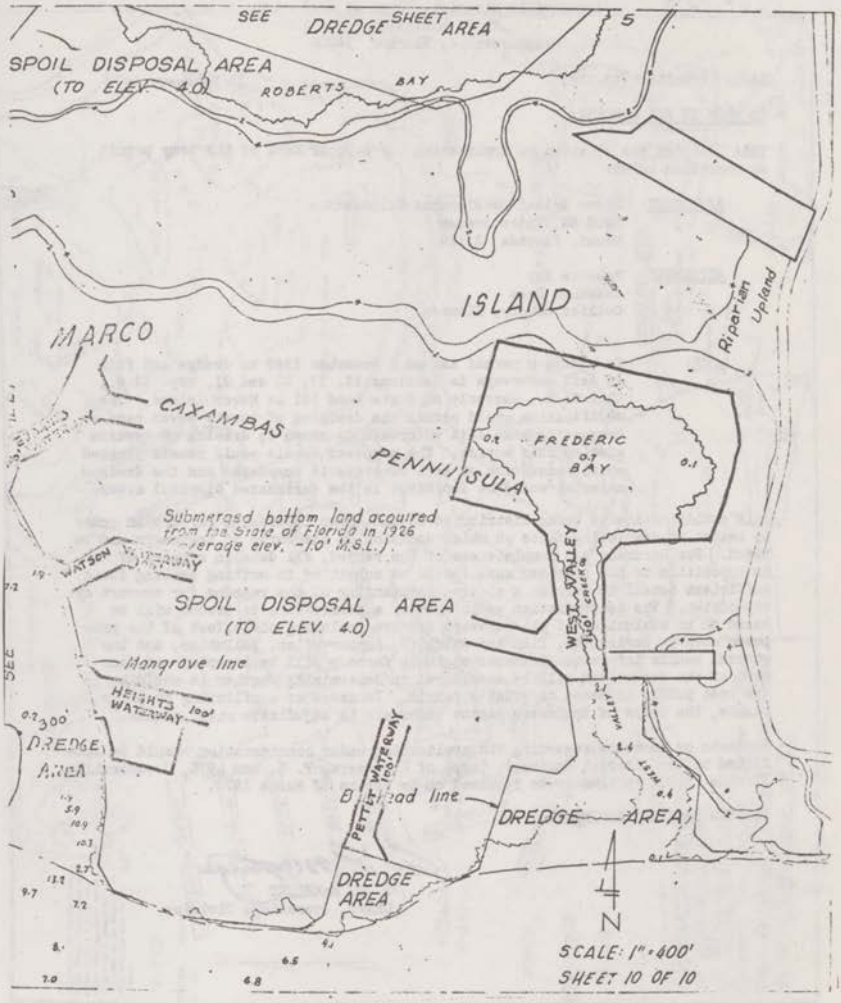
P(67-762) Hist


SEE SHEET 4
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -10' M.S.L.).
MARCO ISLAND
SPOIL DISPOSAL AREA
(TO ELEV. 40)
Bulkhead line
WINTERBERRY WATERWAY 100'
N
SCALE: 1" = 400'
SHEET 5 OF 10
COUNTY ROAD
Riparian Islands
Mangrove
ALAMEDA WATERWAY
CORONADO WATERWAY
250'
225'
6 Ac. Undisturbed Area
DREDGE AREA
ROBERTS BAY
500'
250'
6 Ac. Undisturbed Area
150'
SPOIL DISPOSAL AREA
250'
10 Ac. Experimental Mangrove Island Project Area
200'
150'
53 Ac. Undisturbed Area
SECTION 16
SECTION 21
150'
SEE SHEET
150'

P(67-76)Hm


SEE SHEET
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -1.0' M.S.L.)
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
7 Ac. Undisturbed Area
Mangrove line
Bulkhead line
2 Ac. Undisturbed Area
AMELIA KEY
VESPERO WATERWAY
Riparian uplands
DREDGE AREA
4 Ac. Undisturbed Area
MAYNARD KEY
SPOIL DISPOSAL AREA
18 Ac. Undisturbed Area
Mangrove Island
JOHN KEY
To Be Preserved
6 Ac. Undisturbed Area
SCALE: 1"=400'
SHEET 9 OF 10

P(67-76-2)HSE


SEE SHEET 5 DREDGE AREA
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
ROBERTS BAY
ISLAND
MARCO
CAXAMBAS
PENNINSULA
FREDERIC BAY
Riparian Upland
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -1.0' M.S.L.).
WATSON WATERWAY
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
WEST VALLEY
Mangrove line
HEIGHTS WATERWAY
DREDGE AREA
PETTIT WATERWAY
Bulkhead line
DREDGE AREA
DREDGE AREA
N
SCALE: 1" = 400'
SHEET 10 OF 10

PUBLIC NOTICE

DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

SAJSP Permits (67-762) 25 February 1970

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army permit as described below:

APPLICANT: Marco Island Development Corporation
3250 SW. Third Avenue
Miami, Florida 33129

WATERWAY: Roberts Bay
Caxambas Pass
Collier County, Florida

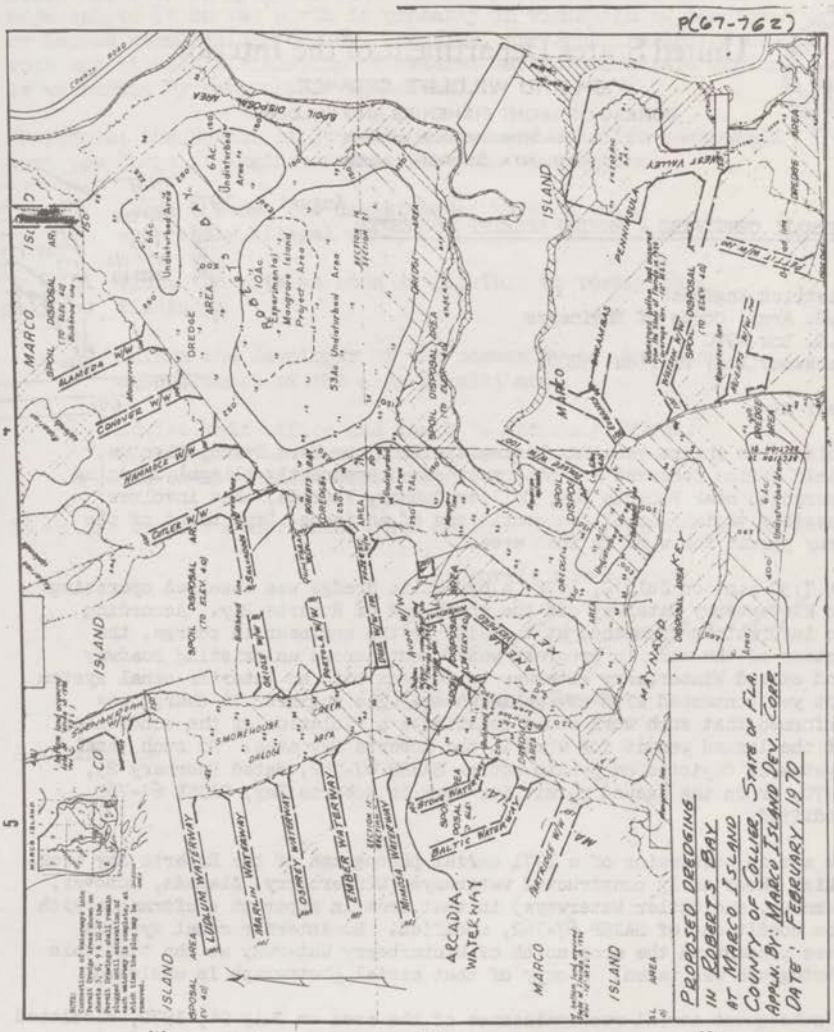
WORK: To modify a permit issued 8 December 1969 to dredge and fill in said waterways in Sections 16, 17, 20 and 21, Twp. 52 S., Rge. 26 E., westerly of State Road 591 at Marco Island. The modification would permit the dredging of twenty-seven canals connecting with said waterways as shown on drawing on reverse side of this notice. The proposed canals would remain plugged until excavation of each waterway is completed and the dredged material would be deposited in the designated disposal areas.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The determination as to whether a permit will be issued will be based on an evaluation of all relevant factors including the effect of the proposed work on navigation, fish and wildlife, conservation, pollution, and the general public interest. Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit. In cases of conflicting property rights, the Corps of Engineers cannot undertake to adjudicate rival claims.

Protests or comments regarding the application under consideration should be submitted to the District Engineer, Corps of Engineers, P. O. Box 4970, Jacksonville, Florida 32201 in time to be received on or before 27 March 1970.

FOR THE DISTRICT ENGINEER:

A. L. McKNIGHT
Chief, Operations Division


P(67-762)
PROPOSED DREDGING
IN ROBERTS BAY
AT MARCO ISLAND
COUNTY OF COLLIER, STATE OF FLA.
APPLN. BY: MARCO ISLAND DEV. CORP.
DATE: FEBRUARY, 1970
MARCO ISLAND
ISLAND
MARCO
ARCADIA WATERWAY
MARCO ISLAND
MAYNARD KEY
SPOIL DISPOSAL AREA
DREDGE AREA
6 Ac Undisturbed Area
53 Ac Undisturbed Area
Proposed Recreational Vehicle Project Island
Proposed Recreational Vehicle Project Island
Proposed Recreational Vehicle Project Island

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
PEACHTREE-SEVENTH BUILDING
ATLANTA, GEORGIA 30323

August 1, 1972

AIRMAIL CERTIFIED - RETURN RECEIPT REQUESTED

District Engineer
U.S. Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This is to inform you that biologists from our Vero Beach, Florida, field office observed and photographed an apparently illegal dredging operation near Roberts Bay, Collier County, Florida, that involves possible violations of the conditions of an issued Department of the Army permit for work in that area.

At 7:30 a.m. on July 2, 1972, a hydraulic dredge was observed operating in Winterberry Waterway off the north end of Roberts Bay. According to information furnished at the site by the engineer in charge, the intent of the work in progress was to cut across an existing roadway and extend Winterberry Waterway to connect with an interior canal system not yet connected with navigable water. The engineer in charge was informed that such work would constitute a violation of the conditions of the issued permit for work in the Roberts Bay area. No such canal system is depicted on public notice SAJSP 67-762, dated February 25, 1970, or on the issued permit for work in Roberts Bay, SAJSP 67-762, modified.

We are in possession of a 1971 aerial photograph of the Roberts Bay area which shows newly constructed waterways (Winterberry, Alameda, Conover, Hammock, and Cutler Waterways) in that area in apparent conformance with the conditions of SAJSP 67-762, modified. No interior canal systems were present in the area north of Winterberry Waterway at the time this photograph was taken. A copy of that aerial photograph is enclosed.

A subsequent aerial reconnaissance of the area on July 24, 1972, disclosed that a connection had been made between Winterberry Waterway and an extensive canal system to the north. The enclosed "Polaroid" photograph depicts this work. On the project plans provided with issued permit SAJSP 67-762, modified, most of the area occupied by this canal system is identified as "submerged bottom land acquired from the State of Florida in 1926 (average elevation minus mean sea level)," and is shown only as "spoil disposal area (to elevation 4)." No bulkheads or waterway systems are shown as part of the work in this area.

Since the work in progress in Winterberry Waterway and the area adjacent to it on the north is probably in violation of the terms of issued permit SAJSP 67-762, modified, the continuation of such work constitutes a violation of Federal law and immediate action is warranted by responsible agencies.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers take the following action:

1. Issue a cease and desist order to stop this apparently illegal work;

2. Visit the site as soon as possible to verify our findings;

3. Inform the developer of the necessity of obtaining a Department of the Army permit; and,

4. Advise this office and the U.S. Attorney, Miami, Florida, if the activity is legal or if a cease and desist order has been issued.

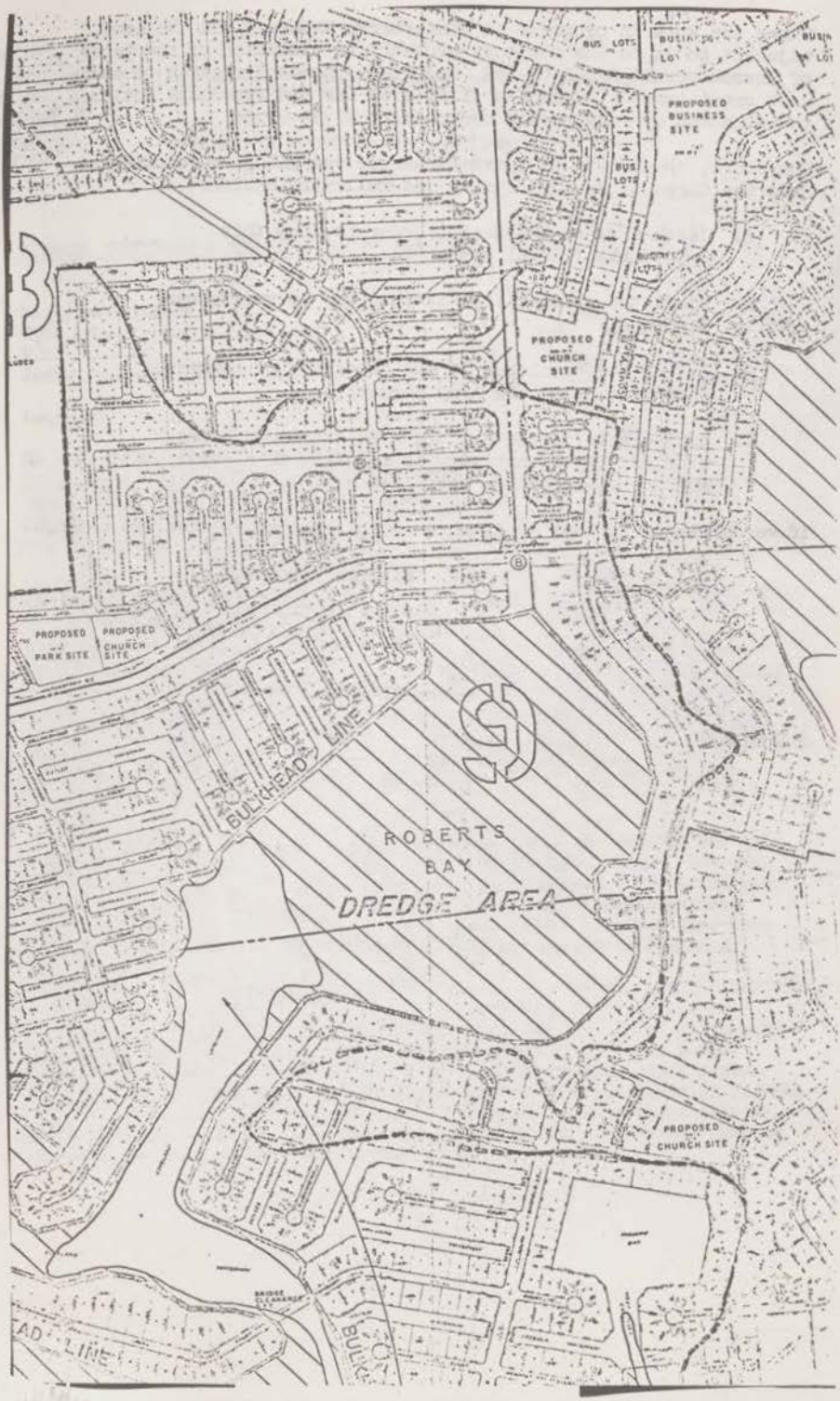
If we can be of further assistance on this matter, please let us know.

Sincerely yours,

Jack E. Hemphill

Acting Regional Director

2 Enclosures


BUS LOTS
PROPOSED BUSINESS SITE
PROPOSED CHURCH SITE
PROPOSED PARK SITE
PROPOSED CHURCH SITE
BULKHEAD LINE
ROBERTS BAY
DREDGE AREA
PROPOSED CHURCH SITE
BRIDGE CLEARANCE

SAJSE Permits 19 October 1972

Regional Director
United States Department of the Interior
Bureau of Sport Fisheries and Wildlife
Peachtree-Seventh Building
Atlanta, Georgia 30323

Dear Sir:

This letter is in response to recent letters this office has received from you concerning apparent illegal dredge and fill operations within our District.

We are continually receiving many reports from you concerning apparent violations of the River and Harbor Act of 1899. All of these reports contain the statement that the apparent illegal work has been observed and photographed by representatives of your Vero Beach, Florida, field office. However, these reports usually contain inadequate information as to who the developer is and where the work is being accomplished. If your representatives could spend a very small amount of additional time researching their finds in order to determine exactly who the developer is and his address, and the exact location of the apparent illegal work, much time would be saved and this office would be able to respond quicker. By obtaining the above information, we may be able to eliminate the necessity of an immediate inspection of the area by the Corps of Engineers.

In order to develop better coordination between your Vero Beach office and this office, we recommend that you report all apparent illegal work activities to Mr. John Adams of our Permits Branch, telephone 904-791-3526. If Mr. Adams can be furnished with the above requested additional information, this office will be able to react quicker in an effort to stop the apparent illegal work that is being accomplished within our District.

The following is a case by case response to some of your recent letters:

Joder Cameron: St. Johns River, Seminole County - Your letter of 23 May 1972. Investigations of this area revealed that an extensive area of submerged lands has been diked. We are continuing to investigate this area to determine the necessary information in order to initiate action against the appropriate parties.

D. O. FILES IN PERMITS SECTION

SAJSE Permits 19 October 1972
Regional Director, United States Department of the Interior

Eric Ehdworth: St. Johns River, Putnam County - Your letter of 23 May 1972. A complete investigation of this development, St. Johns Harbor Subdivision, revealed that the canals were excavated in 1964. The developers accomplished some minor maintenance excavation of existing canals during the past year. Since this work was maintenance excavation and very minor, this office does not intend to initiate action against the developers for this work. The developers have been informed of the necessity of obtaining a Department of the Army permit prior to commencing additional maintenance excavation.

Steffens-Buckingham Development Corporation: Dassey Creek - Your letter of 24 July 1972. This office became aware of this project in April 1969 and at that time elected not to assert jurisdiction. By letter of 11 April 1969, we informed the developers that a Department of the Army permit would not be required for their proposed work. A recent inspection of this area revealed that Steffens-Buckingham Development Corporation has completed their development. However, additional upland canal excavation is being accomplished in this area by another developer. We are continuing to investigate this matter and will take appropriate action.

The Soundings: Intracoastal Waterway, South Jupiter Narrows, Martin County - Your letter of 24 July 1972. Field inspection and review of aerial photographs revealed that all canal excavation was completed during 1967. During our inspection the only work being accomplished was the repair of existing bulkheads. The owner of this development, Hobe Sound North, Inc., has been fully informed of the necessity of obtaining a Department of the Army permit for maintenance work of this nature.

Marco Island - Permit (67-762): Roberts Bay - Your letter of 1 August 1972. The Marco Island Development Corporation was issued a Department of the Army permit on 10 December 1969 for dredging and filling operations in Roberts Bay and Smokehouse Creek. On 31 July 1970 the Marco Island Development Corporation was issued a modification to their permit for the connection of 27 canals to Roberts Bay and Caxambas Pass. These canals were to remain plugged until excavation of each waterway was completed. At that time we were not requiring applicants to show the full extent of "upland" canals being connected but merely the connection itself to navigable waters. Our inspection of this development, on 28 August 1972, revealed that excavation was presently being conducted in Winterberry Canal behind the required plug at Winterberry Drive, and that a "Diaper" is being used to control the turbidity on the Bay side of this plug. Based on the above, it is our determination that the permittee is conducting his excavation operations in accordance with the issued permit and that there is no present violation of Section 10 of the River and Harbor Act of 1899.

D. O. FILES IN PERMITS SECTION

SAJSE Permits 19 October 1972
Regional Director, United States Department of the Interior

Matlacha Isles, Inc.: Matlacha Pass - Your letter of 8 August 1972. Investigations of the excavation that has been accomplished by Matlacha Isles, Inc., revealed that this excavation was accomplished between 1960 and 1965. However, we are aware of an extensive upland development in this area being accomplished by GAC Properties, Inc. They have been working with the Florida Department of Pollution Control since 1 November 1971 and have met with the Florida Trustees of the Internal Improvement Trust Fund and this office to discuss their project. GAC is proposing to construct a peripheral canal above the mean high water line with two connections to Matlacha Pass. At present all work is being accomplished on the upland and there does not appear to be any present violation of Section 10 of the River and Harbor Act of 1899.

Naples Tomato Growers, Inc.: Vicinity of Spring Creek, two miles north of Bonita Springs - Your letter of 9 August 1972. This office became aware of the drainage excavation being accomplished by Naples Tomato Growers, Inc., in February 1972 and issued a stop order to the developers. Further inspections by the Corps of Engineers have revealed that no additional work has been accomplished since issuance of our stop order.

Commonwealth Oil Refining Company: Guaynilla Bay, Puerto Rico - Your letter of 20 September 1972. Investigations of this area by representatives of the Corps of Engineers revealed that the fill was being placed by the Puerto Rico Water Resources Authority and not the Commonwealth Oil Refining Company. The appropriate parties have been issued a stop order and we will continue to investigate this area in order to take necessary action.

This office will continue investigating all of the apparent illegal work reports you furnish us and will do our utmost to keep you advised of our progress and actions taken during these investigations.

Sincerely yours,

Adams/mh/3526

Goode

GAIL G. GREN
Chief, Operations Division

Copy furn:
United States Attorney
Middle District of Florida
P. O. Box 59
Jacksonville, Florida 32201

United States Attorney
Southern District of Florida
14 N. E. First Avenue
Room 300, Ainsley Building
Miami, Florida 33132

Area Engr, Clewiston
Area Engr, Tampa
Area Engr, San Juan
Res Engr, Palatka
ResEngr, Mibch
Office of Counsel

D. O. FILES IN PERMITS SECTION

United States Department of the Interior

FISH AND WILDLIFE SERVICE

BUREAU OF SPORT FISHERIES AND WILDLIFE

17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

C-820736

AIRMAIL-CERTIFIED
Return Receipt Requested

March 13, 1973

ENG	CONST	OPR	COMP	RS
CHF	CHF	CHF	AUD	OCIC
ASST	S&I CHF	PO	BUD	SFT
VE	QA	NAV	MGT	PER
DESG	TECH	PROGR	F&A	SUP
CD	O/E & C/A	APC	COST	OAS
PLAN	ASST (A)	PMTS ST	DISB	ADP
SURV		CONST	EXAM	PAO
PROG		DISCHG	PROP	SCTY
SVC		STAT	FIN	
POST		PLT		
		MEP		

ACTION TAKEN BY

District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This is to confirm a telephone call from a representative of our office to Mr. John Adams of your staff on March 2, 1973, regarding illegal construction that was observed and photographed on February 27. The project is located on Marco Island, Collier County, Florida, along the east side of Smokehouse Creek. The developer, Deltona Corp., has constructed a bulkheaded canal between Deer and Vespero Waterways in apparent violation of the conditions of the permit (SAJSP 67-762, modified) issued for work in the Roberts Bay project area. An aerial photograph depicting this work will be forwarded your office in the near future.

Since neither the public notice nor the issued permit depict or describe any such canal, its construction is apparently unauthorized by a Department of the Army permit. If this work does, in fact, constitute a violation of Federal law, then immediate action is warranted by responsible parties.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers take the following action:

1. Visit the site as soon as possible to confirm our findings.

2. If the developer is found to have violated Federal law by construction of unpermitted work, refer the matter to the office of the U.S. Attorney, Miami, Florida, for appropriate legal action.

3. Inform this Bureau within 7 days of receipt of this letter of the action taken by your office regarding this matter.

If we can be of further assistance in this matter, please let us know.

Sincerely yours,

Jack E. Hemphill

Acting Regional Director

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 488-8123
PLEASE ADDRESS REPLY TO:
POST OFFICE BOX XXXX 2989
SARASOTA, FLORIDA 33578
PHONE 389-8671

April 3, 1973

EA		DDE		
ENG	CONST	OPR	COMP	RE
CHF	CHF	CHF	AUD	CWR
ASST	S&I CHF	FO	CUD	SFT
VE	QA	NAV	MGT	PER
DESG	TECH	PROGR	FGA	SUP
CD	DIE & C/A	AEC	COST	OAS
PLAN	ASST (A)	PROJ ST	DISB	AIP
SURV		CONST	EXAM	PAD
PROG		ENG	PROP	SCTY
SVC		STAT	FIN	
POST		PLT		
		MEP		

ACTION TAKEN BY _____ DATE _____

CERTIFIED--RETURN RECEIPT

Deltona Corporation
3250 Southwest Third Avenue
Miami, Florida 33129

Gentlemen:

Unauthorized Canal (Arcadia Waterway), Section 20, Township 52 South, Range 26 East, (According to U.S. Survey, 1877 A.D.), Smokehouse Creek, Collier County

An on site inspection conducted by myself and the area inspector indicates that a waterway located between Vespero and Deer Waterways has been connected to Smokehouse Creek.

We have no record of a permit being issued for this connection to the navigable waters of the State of Florida. Under Chapter 253, Florida Statutes any construction, excavation, or filling below the high water line bordering upon or within natural and/or navigable bodies of water requires a permit from this agency. This is only issued after application by the landowner, review by state environmental agencies, and approval by the Board of Trustees of the Internal Improvement Trust Fund.

Permits may also be required from the Department of Pollution Control, U.S. Army Corps of Engineers, and local authorities. These permit requirements are designed to protect our valued marine resources and the public's interests.

Reubin O'D. Askew, Governor
Richard (Dick) Stone, Secretary of State
Robert L. Shevin, Attorney General
Fred O. Dickinson, Jr., Comptroller
Thomas D. O'Malley, Treasurer
Floyd T. Christian, Commissioner of Education
Doyle Conner, Commissioner of Agriculture

Accordingly, you are directed to cease and desist all activities that fall within the purview of this agency unless such activity has been properly permitted.

We request that you furnish us with information as to under what authority Arcadia Waterway was connected.

If you have any questions as to clarification, please contact this office at (813) 959-5871.

Sincerely,

Thomas M. Provenzano

Thomas M. Provenzano
Area II Supervisor

TMP/mh

cc: Department of Pollution Control
U.S. Army Corps of Engineers
Lt. Benny Hendrix
Mr. Reese H. Kessler, Jr.
Mr. John R. Van Norman

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

AIRMAIL

April 5, 1973

District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

The enclosed photograph depicts the location of unpermitted construction work near the entrance to Smokehouse Creek, Marco Island, Florida, previously reported to you by this Bureau in our letter of March 13, 1973.

If we can be of further assistance to you in this matter, please let us know.

Sincerely yours,

Jack E. Hemphill

Deputy Regional Director

EA		DDE		DE
ENG	CONST	O/R	COMP	RE
CHF	CHF	CHF	AUD	OofC
ASST	S&I CHF	PO	BUD	SFT
VE	QA	NAV	PROCR	PER
DESG	TECH	ADM	MGT	SUP
CD	O/E & C/A	ASST (A)	E/A	
PLAN	ASST (A)		CONST	CAS
SURV				
PROG				
SVC				
FILE				

TAKEN BY

DATE

SAJSE 9 April 1973

Mr. Arthur L. Day, Vice President
The Deltona Corporation
3250 S.W. Third Avenue
Miami, Florida 33129

Dear Mr. Day:

This office has evidence indicating that the Deltona Corporation has excavated and connected an unpermitted canal to the navigable waters of the United States, Smokehouse Creek, Collier County, Florida.

Section 10 of the River and Harbor Act of 3 March 1899, 33 U.S.C. 403, prohibits such work unless it is properly authorized by a Department of the Army permit. Your Department of the Army permit, 67-782, does not authorize the canal in question, which is located between Deer and Vespero Waterways. Accordingly, you are directed to immediately place a plug at the connection of this canal with Smokehouse Creek. This plug is to be placed in a substantial manner so that it will not be breached until such time as all required permits are obtained. Failure to comply with this directive will result in this office initiating appropriate legal action for violation of 33 U.S.C. 403.

Request you acknowledge receipt of this letter. Any questions you may have should be referred to the Permits Branch, telephone 904-791-3423.

Sincerely yours,

JACK R. HOWALT
Acting Chief, Operations Division

Copy furn: Area Engr, Clewiston
Office of Counsel
FWPCA
Regional Director, DI, Atlanta
EnfSec w/cy of DI's ltr dtd 4-5-73 atch

Adams/mh/3826
Goode

C-551126

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DELIVER TO ADDRESSEE ONLY

D. O. FILES IN PERMITS SECTION

CORP ENGRS JAX

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PMS JACK A KOWALT, FONE

CHIEF OPERATIONS DIVN US ARMY CORP OF ENGINEERS FED BLDG

JACKSONVILLE FL 32201

AN IMMEDIATE CONFERENCE IS REQUESTED WITH REFERENCE TO YOUR LETTER OF APRIL 9TH 1973, RECEIVED APRIL 13TH 1973. THE SUBJECT WATERWAY CONNECTION WAS INCLUDED WITHIN MATERIALS SUBMITTED TO YOUR OFFICE BUT WAS OMITTED FROM PERMIT DRAWINGS THROUGH INADVERTENT SCRIVENERS ERROR. ALL WORK IN OR ABUTTING THE SUBJECT CONNECTION HAS BEEN TERMINATED

ARTHUR L DAY VP AND CHIEF ENGINEER THE DELTONA CORP

SAJKS (67-762) 18 April 1973

Mr. Jack E. Herphill
Deputy Regional Director
Bureau of Sport Fisheries and Wildlife
U. S. Department of the Interior
17 Executive Park Drive, N. E.
Atlanta, Georgia 30329

Dear Mr. Herphill:

Your letter of 13 March 1973 furnished information on an apparent violation of the conditions of permit 67-762 modified, for the Roberts Bay area of the Marco Island Development, Collier County, Florida. By letter of 5 April 1973 you furnished an aerial photograph showing the canal in question known as Arcadia Waterway.

By letter dated 9 April 1973, copy inclosed, we advised the Deltona Corporation that permit 67-762 did not authorize this canal and that it should therefore be plugged until all required permits were obtained. The Deltona Corporation responded by teletype dated 16 April 1973, copy inclosed, with a request for a conference. We believe that a representative of the Bureau should be present at such a conference and request that you or a representative contact Mr. D. N. Goode at 904-791-2423 to arrange a satisfactory time for such a conference.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

2 Incls
As stated

Copy furn: Area Engr, Clewiston
Office of Counsel

Goode/mh/3423

D. O. FILES IN PERMITS SECTION

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

AIRMAIL - CERTIFIED - RETURN RECEIPT REQUESTED

April 20, 1973

District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This is to confirm a telephone call by our Vero Beach, Florida, field office to Mr. Glen Roberson of your staff at 10:15 a.m. on April 9, 1973, regarding an apparent illegal dredge and fill operation that was observed and photographed on April 4, 1973.

The project is located just east of State Road 951, two miles north of the Marco Island Bridge toll booth, Collier County, Florida. The developer, Deltona Corporation, has diked across a navigable creek and dredged and filled in its upper reaches. Valuable wetland habitat, principally red mangrove, was present prior to construction of the dike and alteration of the area above it. This creek is navigable up to the southern boundary of the diked and filled area, as demonstrated by our field biologist who was able to paddle a canoe from McIlvaine Bay, under State Road 951, and thence along the creek to the base of the developer's dike. An aerial photograph of the area is enclosed, with overlay, showing the canoe route taken. We are having copies made of transparencies taken on the ground and will forward them to you shortly.

We understand that a Department of the Army permit has not been issued for this project. If a permit is required, the continuation of these unpermitted activities constitutes a violation of Federal law and immediate action is warranted by responsible agencies.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers take the following action:

1. Issue a cease and desist order to stop this apparently illegal work;

2. Visit the site as soon as possible to verify our findings;

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3. Inform the developer of the necessity of obtaining a Department of the Army permit; and

4. Advise this office and the U.S. Attorney, Miami, Florida, within 7 days of receipt of this letter if the activity is legal or if a cease and desist order has been issued.

If we can be of further assistance on this matter, please let us know.

Sincerely yours,

Jack E. Hemphill

Deputy Regional Director

Enclosure

SAJSE 23 May 1973

Mr. James E. Vensel
Senior Vice President
The Deltona Corporation
3250 S. W. Third Avenue
Miami, Florida 33129

Dear Mr. Vensel:

Reference is made to your letter of 12 February 1973 in which you submitted a report on the status of various construction activities concerning Deltona's project in the Marco Island area, Collier County, Florida. Specific reference is made to your mention of Deltona's construction of an 18-hole golf course north of Marco Island.

It has been reported that, during construction operations in the above mentioned area, the Deltona Corporation has blocked the upper reaches of a tidal creek which flows under State Road 951 to Hacienda Bay. In the above letter you stated that, "This area has been carefully surveyed for the accurate location of mean high water line and additional studies were conducted to determine the landward influence of tidal penetration." You further stated that, "The studies verified that there was no tidal influence in the area of our current construction work, therefore indicating that our work was in fact not in the jurisdictional area of the State or Corps of Engineers."

Since we have received the above report and you have conducted said studies, we request that you furnish us copies of your survey and studies in the above mentioned area. This information is required in order that we can determine if your statement that we do not have jurisdiction over said work is correct.

Sincerely yours,

B. N. GOODE
Chief, Permits & Statistics Branch

Copy furn: AE Clewiston

HENRY S. REUSS, WIS., CHAIRMAN
JOHN E. MOSS, CALIF.
DANTE B. FASCELL, FLA.
LLOYD V. HICKS, WASH.
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JACK BROOKS, TEX.

GUY VANDER JAGT, MICH.
WILBERT SUDE, MD.
PAUL N. MCCLOSKEY, JR., CALIF.
ALAN STEELMAN, TEX.
JOEL PRITCHARD, WASH.

225-6427

NINETY-THIRD CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-C
WASHINGTON, D.C. 20515

August 31, 1973

Mr. C. Edward Carlson
Regional Director
Bureau of Sport Fisheries and Wildlife
17 Executive Park Drive N.E.
Atlanta, Georgia 30323

Dear Mr. Carlson:

Enclosed is a memorandum dated June 4, 1973, from the Corps of Engineers concerning several matters raised at our Miami, Florida, hearings last May.

Since many of these matters were raised as a result of data which your agency provided to us at those hearings, we would appreciate it if you would carefully review the Corps' response and provide to us your detailed comments on each of the items mentioned in the Corps' memorandum.

We request that you reply by September 17, 1973.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Enclosure

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

September 18, 1973

RECEIVED
SEP 24 1973
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

Honorable Henry S. Reuss
House of Representatives
Washington, D. C. 20515

Dear Mr. Reuss:

In response to your request of August 31, we have prepared the enclosed detailed comments on supplemental items submitted by the Corps of Engineers to the House Conservation and Natural Resources Subcommittee. For your convenience in review of our comments, we have followed the outline format used by the Corps in its submittal. Although item l.b. dealt with a matter not originally raised by the Department of the Interior, we have included a summary of our activities and other information we have obtained on the permit application that is the subject of that item.

We appreciate the opportunity to comment and shall be pleased to be of further assistance in this or other matters of concern to the Subcommittee.

Sincerely yours,

C. Edward Carlson

Regional Director

Enclosure

1.a. Permit No. 73-02 -- Donaldson Engineering, Inc., Bulkheading Canals off North New River Canal, Broward County, Florida.

Bureau of Sport Fisheries and Wildlife (BSF&W) personnel reviewing the Donaldson permit application, SAJSC 73-0284 (Exhibit 1), deemed it unusual for a 6000-foot-plus bulkheading proposal to be advertised in a letter of permission format in lieu of the full public notice. The Corps described to the Subcommittee its criteria for determining when the letter of permission should be used, as stated on page 1 of the Corps submittal: "The Corps does issue letters of permission to work in navigable waters where the proposed work is minor, would not have a significant impact on environmental values, and should encounter no opposition (emphasis added). Examples of such work are private navigation aids, signs, mooring facilities, boat launching ramps, floating boat docks, temporary water intake structures, and similar minor work." The Donaldson bulkheading project was certainly not minor in terms of the magnitude of work proposed. There is no similarity in either character or magnitude between the Donaldson canals and the examples of genuinely minor work cited by the Corps. The impact of the bulkhead installation on environmental values is not significant, since the principal adverse impact of the dead-end canals derives not from the absence or presence of bulkheads, but from the inherently undesirable features common to almost all such systems (These features were summarized in our response to question 10(c) of the Subcommitte's inquiry to the Department of the Interior.).

Since the principal impact of dead-end upland canals is their impact on water quality, we queried an attorney of the Department of Pollution Control (DPC) as to whether that agency would have offered opposition to issuance of a permit to bulkhead this system of unpermitted dead-end canals. The DPC, at the time of the Donaldson bulkheading application, was not being furnished copies of Class C (letter-of-permission) applications, and consequently did not learn of the proposal for bulkheading until a representative of the BSF&W Atlanta Office contacted the legal section of the DPC in May of 1973, to discuss the Donaldson application. (Subsequent to this contact, the DPC requested that the Corps provide that Department copies of all Class C permit applications.)

Had the DPC reviewed the Donaldson bulkheading application and learned of the unpermitted nature of the canals, it could have: (a) prosecuted the developer for violation of state law; (b) required the developer to install a plug separating project canals from connecting waterways, with the option of providing a boat lift to facilitate navigation; (c) required the developer to apply for an operation permit, whereby the canal system would be designated a pollution source and required by law to comply with State water quality standards and to be plugged if these standards were not met; (c) requested the Corps to suspend action on the bulkheading permit application until appropriate DPC action could be taken with regard to the unpermitted canals; or, (e) taken other action deemed

appropriate by that agency. The most probably action, according to the DPC attorney, would have been a recommendation for denial of the permit, with further study to determine whether to prosecute the applicant for illegally excavating the canals.

A position very recently adopted by the Jacksonville District, Corps of Engineers, (and post-dating issuance of the Donaldson permit) would preclude DPC certification for all projects except (1) those that involved specific construction-associated "discharges" into navigable waters or (2) those that involve construction of facilities (such as marinas) that could at some future time produce discharges of pollutants into the navigable waters. A construction-associated "discharge," as defined by the present Corps interpretation, consists of a direct placement of materials below mean high water. By this definition, dredging or other excavation or construction below mean high water is considered by the Corps to be exempt from DPC certification if excavated materials removed from the water bottoms are deposited upon an upland site. The Corps, in applying these very recently adopted criteria to the Donaldson bulkheading application would not require a water quality certification from the Department as a prerequisite to permit issuance.

Since bulkhead installations as well as other forms of construction below mean high water may produce excessive turbidity, sometimes bringing toxic and pollutive materials into suspension, the DPC has taken issue with the Corps on this interpretation of the law, and a court action by DPC appears imminent.

Our point-by-point evaluation of the Corps' stated reasons for its decisions in the Donaldson matter is as follows:

1. We do not agree that the subject canals are "no different than the multitude of other unpermitted canals in the Ft. Lauderdale area." Many of these existing unpermitted canals are many years old, predating efforts by the Corps (as described on pages 15-17 of its submittal to your Subcommittee) to publicize the need for such construction. Many have been in existence for a period of time that now exceeds the statute of limitations. Most perpetrators of these unpermitted works have already sold their riparian ownerships to numerous second parties. By contrast, the excavation of the Donaldson canals was completed in late 1972, and at the time of the applicant's bulkheading proposal, riparian possession rested with the applicant.

2. It is appropriate and proper for the developer to have obtained necessary construction permits for his canals from local and regional authorities. It is equally appropriate for the Corps, to assure itself that predecessory permitting requirements have been satisfied. However, it is inappropriate to argue that these are grounds for issuance of a Department of the Army permit.

It is no more proper for the Corps to circumvent normal review processes in consideration of an after-the-fact matter, and to preclude review and comment by responsible agencies, than to do so with respect to a before-the-fact application. To do so is to denigrate the multidisciplinary review process upon which the Federal permitting system is structured. We note that none of the local or regional agencies that issued permits for the Donaldson canals have as their principal responsibility the protection of fish and wildlife resources.

One permit held by the developer was issued by the Central and Southern Florida Flood Control District (C&SFFCD). That agency operates an extensive public water management system. Most of the existing features of this system were constructed by the Corps of Engineers and the Corps has numerous proposed additions to the system in either construction or planning stages. Certain canals in this system (such as the North New River Canal) are navigable. In the close relationship between the Corps as the construction agency and the C&SFFCD as operator of the project works of this regional system of canals and waterways, we see the opportunity for a productive liaison, through which such matters as the Donaldson problem could in most instances be avoided. If copies of applications for work in or connecting to the navigable canals of the C&SFFCD were routinely provided the Corps, the Corps could in turn advise the applicants in a timely fashion of the need to obtain any required Corps permits.

3. We have no basis for either questioning or affirming the sincerity of the developer. It is regrettable that a public information program of the scope described by the Corps (pages 15-17 of their submittal to your Subcommittee) somehow failed to compel the attention of an engineering firm with an 18-year history of doing business in the area of Ft. Lauderdale, an area especially well-known for its extensive residential canal-waterfront communities. In considering the Donaldson problem, it would have been appropriate for the Corps to examine its mailing lists of "all known dredge and fill contractors. . . architects. . . engineers and developers" (page 16 of Corps' submittal) to determine whether the Donaldson Engineering firm had or had not been notified of Corps permitting requirements. We have no way of knowing whether this was done.

4. We presume that the permits which the developer inquired on his own volition were the "permits to bulkhead four existing canals" as referenced in the first sentence of the Corps memorandum. It is also stated that "He [the developer] became concerned about a Corps permit when his bulkhead contractor inquired." It is not clear from this statement whether the developer's concern was for a before-the-fact permit to bulkhead the existing canals or for an after-the-fact

permit for the canals themselves. If we presume that the developer's inquiry was limited to his concern for permits to install bulkheads, then we must conclude that the Corps decision not to require an after-the-fact permit for the canals themselves was in some fashion based on his inquiry about a before-the-fact permit for bulkheading.

If, however, the applicant inquired "on his own volition" about the need to obtain an after-the-fact permit for the existing canals, it is pertinent to inquire why he was informed that no permit would be required.

In a telephone conversation with members of the BSF&W Atlanta Regional Office staff, a representative of the Jacksonville Corps Office described an additional basis upon which he said the Corps had determined not to take action on the unpermitted Donaldson canals. He explained that the Florida Department of Pollution Control would not grant certification to this after-the-fact dead-end canal system, and that consequently there would be no point in circulating a public notice of after-the-fact permit application, since without DPC certification no Corps permit could be issued. If a similar rationale were applied to all instances in which permitting actions are considered for unauthorized work, then only those innocuous projects that embody insignificant impact upon water quality or other natural, social, or economic values would become the subject of after-the-fact public notices of permit application. Conversely, projects with significant adverse impacts on these values would escape review by responsible agencies having appropriate jurisdiction or expertise.

This Bureau's April 23 request to the Corps to delay action on the Donaldson application was based on a liaison arrangement between the Bureau and the Office of Interstate Land Sales Registration (OILSR) (alluded to by Mr. George Bernstein in his submittal to the Sub-committee, page 5). Since it would have been inappropriate for the BSF&W to sanction the ongoing of a project that failed to comply with the Interstate Land Sales Registration Act, we wanted to verify the status of the Donaldson development vis-a-vis this law. The developer subsequently informed us that he will market only finished houses. This exempts him from the requirement to register with the OILSR.

Since the Corps had firmly decided to take no action with regard to the illegal canals, this Bureau had no option but to comment upon the bulkheading permit application. On April 25, Mr. John Crowder of this office informed the Jacksonville Corps Office that the Bureau would not object to issuance of that permit, and that we would submit a letter (Exhibit 2) to the Corps concerning this matter in the near future.

1.b. Permit No. 72-1300 -- Dan B. Cooper, Bulkhead, Intracoastal Waterway, Flagler County

The Corps summary of this matter is a correct statement of this Bureau's actions on the subject permit application. When an applicant is willing to alter his project to conform to this Bureau's recommendations, the need for further comment or input from this Bureau is eliminated. Since the applicant indicated that he planned to place his bulkhead at the mean high water line, we considered the matter closed. A copy of our letter of comment on the permit application (Exhibit 3) is enclosed, together with a copy of the public notice (Exhibit 4).

Our further interest in this matter is compelled by the specific wording of the Corps' supplemental report to the Subcommittee. Quoting from that report:

> "A letter from the applicant stating the location was already at the mean high waterline was sent to the Bureau on 21 February 1973 with nothing further heard from the Bureau. Information available in the District Office verified that the bulkhead does not encroach on the waterway."

It is quite possible for a bulkhead to be situated well below the line of mean high water without encroaching on the Intracoastal Waterway (IWW) right-of-way. The section drawing provided on the public notice (Exhibit 4) depicts three significant aspects of the proposed work: (1) The IWW is bounded by a right-of-way line that extends approximately 5.5 feet waterward of the mean high water line. Most of the productive shallow water habitat referenced in our letter of comment on this application lies on the sloping grade between the IWW right-of-way line and the line of mean high water. (2) There is a 6-inch interval between the west IWW right-of-way boundary and the cap of the proposed bulkhead. (3) All but about 18 inches of the proposed bulkhead is below mean high water.

If the applicant has placed a bulkhead as proposed in the original permit drawings, then he has destroyed most of those productive shallows. We do not know whether this has occurred. However, a Bureau of Sport Fisheries and Wildlife biologist will visit the project area in the near future to determine the location of the bulkhead, and we will furnish the Subcommittee a report on his findings.

The delay occasioned by the State Trustees in the processing of this permit is more fully described as follows: The Trustees' November 30 request to the Corps consisted of their routine notification to the Corps that the applicant had not filed a State permit application and a request not to issue the Corps permit until and unless the required State permit has also been issued. On February 27, three months after issuance of the Corps' public notice, the Trustees again wrote the Corps, this time to restate their original request to the Corps to delay action on the permit, since the applicant still had not filed a State permit application. On April 3, 1973, Dan B. Cooper made application to the Trustees for a State permit. Shortly thereafter, the Trustees notified the Corps that action on the State application was pending. Issuance of this so-called "pending letter" to the Corps is a routine procedure of the Trustees in instances when application for a Corps permit precedes application for a State permit.

On May 7, 1973, an inspection of the Cooper property by a representative of the Trustees staff produced the following findings, as quoted from his hand-written field notes: "Present location of bulkhead is below mean high water. Needs affidavit attesting to erosion. If he wants to build now, would suggest moving back about 4 feet." The Trustees, by letter of June 1, notified the applicant that they would not object to the proposed work if the bulkhead was placed at the mean high water line and constructed of rock riprap or faced with same (riprap being vastly superior to smooth artifical surfaces for the attachment of sessile marine organisms). Mr. Cooper, in a June 7 letter response to the Trustees, agreed to place his vertical bulkhead at the mean high water line of ".075 feet" mean sea level, which elevation, he said, was established by the Corps (We believe that this figure has a misplaced decimal and the actual elevation intended was 0.75 feet. This value contrasts sharply with the mean high water elevation of 2.5 feet mean sea level indicated on both the Cooper permit application and on the permit application submitted in September 1972, by ITT Community Development Corporation, the adjacent property owner on the north of the applicant's property.). The State permit was issued on June 22, and the Trustees sent the Corps a letter on June 25, stating that they would no longer object to the issuance of the Corps permit. At that time the Trustees were not aware that the Corps permit had been issued some 53 days earlier. This appears to be contrary to the Corps' policy on local authorization on Department of the Army permit applications (33 CFR 209.120, paragraph (f)(3)) which requires State authorization prior to permit issuance.

From the above, it is seen that the delay on the part of the Trustees, from the time the applicant requested a State permit, until the State permit was issued, amounted to only 49 days. Thus the Corps had been thrice informed of the Trustees' intention to require State permits for the Cooper bulkhead and twice requested not to issue a DOA permit until the State had taken final action. We do not know why the Corps issued this particular permit while continuing to hold approximately 160 other applications dating back to 1970 at the request of the Trustees. (page 2, subheading b.).

Permits No. 73-0284 and 72-1300, Marco Island

2.a. Winterberry Waterway

The Corps summary of our August 1 letter (Exhibit 5) is significantly incorrect in one very important point. The Corps memorandum says the Department of the Interior letter ". . . stated that since the issued permit only shows the connection of Winterberry Waterway to Roberts Bay and not the additional upland canals that the extension of said waterway and the excavation and connection of additional canals to said waterway constitutes a violation of Federal law . . ." The word "upland," which denotes a location above mean sea level, is a word that was not used in the Department of the Interior's August 1, 1972, letter to the Corps. We twice used the word "interior" in describing the canal system involved in the probable violation. Furthermore, in describing the location of this work, we pointed out that the interior canals being connected to Winterberry Waterway were in part situated in an area designated by Deltona Corporation as "submerged bottom land acquired from the State of Florida in 1926 (average elevation minus mean sea level)." Due to an editorial error, our letter omitted the actual elevation of -1.0 foot m.s.l. A copy of a part of the original Roberts Bay permit drawings, prepared by Marco Island Development Corporation (now Deltona Corporation) is enclosed (Exhibit 6) to illustrate the location and description of this land.

The Roberts Bay permit, prior to its modification to permit dredging of the 27 canal connections, depicted the submerged land lying directly north of Roberts Bay as "spoil disposal area (to elevation 4.0). Except for the 500-foot-long segment of Winterberry Waterway connecting with the north end of Roberts Bay, the modified permit (issued July 31, 1970) did not provide that these lands could be used for any purpose other than spoil disposal.

The modified Roberts Bay permit is, in part, an after-the-fact permit, since the dredging of Frederick Bay (a body of water included in the Roberts Bay permit) and construction of some of the canals connecting with Roberts Bay had commenced before a permit application was submitted for such work. The BSF&W's report of these violations to the Corps (Exhibit 7) pointed out that Frederick Bay was to have been filled, not dredged, under terms of the then applicable Corps permit and that the canals under construction at the north end of Roberts Bay were also unpermitted. The developers then applied for a permit to authorize this work and to make additional connections with Roberts Bay, Smokehouse Creek and Caxambas Pass.

We do not know why an after-the-fact permit modification was required to permit dredging in Frederick Bay, a submerged area formerly designated for spoil disposal, when no comparable action was required for the similar modifications now completed in the submerged lands north of Roberts Bay.

Federal law does not allow dredging, filling, or other alteration of submerged lands to be undertaken without the requisite permits specifically authorizing the particular form of work to be undertaken. The construction of dead-end canals in a submerged land area designated only for spoil disposal appeared at the time of the BSF&W August 1 letter to be an illegal activity. The Corps' explanation does not change our perspective in this matter.

2.b. Arcadia Waterway

We have no reason to believe that the Deltona Corporation intended to omit Arcadia Waterway from the application (Exhibit 8) to modify the Roberts Bay permit (No. 67-762). It is not difficult to understand how such an omission could have occurred, considering the history of this segment of the Marco Island development. The original Roberts Bay permit (issued December 8, 1969) described no canals whatsoever. The July 31, 1970, modification of this permit provided for construction of 27 canals, consisting of portions of the applicant's planned waterway system deemed to be below mean high water. Arcadia Waterway would have been the 28th such canal.

In preparing its February 25, 1970, application for the Roberts Bay permit modification, Deltona superimposed the 27 canals onto the drawings prepared for its initial (November 29, 1967) application. On the initial permit drawing, the area where Arcadia Waterway is now situated was overlain with wording describing the then current elevation of the land and its proposed elevation after filling. This probably caused or contributed to Deltona's failure to scribe in Arcadia Waterway at the intended place.

That it was Deltona's original intention to construct both "connecting and interior" waterways, even at the time of the 1967 Roberts Bay application is attested to by a Conservation Survey Report (Exhibit 9) prepared by the Florida Department of Natural Resources in January 1968. On page one of that report, it is stated that:

> "Proposed project plans include dredging of Smokehouse Creek, Roberts Bay, and existing connecting channels to fill existing upland to an elevation of +4.00 feet m.s.l. and further raising the upland to an elevation of +5.50 m.s.l. by excavation of interior waterways."

Therefore, we do not understand why the initial Roberts Bay application did not depict the applicant's plans in greater detail. For it to have done so would have afforded all reviewers an opportunity to evaluate at one time the impact of the entire project. It is also possible that such apparent errors as the ommission of a 300-foot-long canal could have been avoided by submitting a single permit application covering the applicant's complete program of development for the Roberts Bay area.

As of this date, the Corps has not replied to the Bureau of Sport Fisheries and Wildlife's report on Arcadia Waterway, except to request that a Bureau of Sport Fisheries and Wildlife representative attend a conference with the applicant and the Corps in an attempt to resolve this matter. We initially agreed to send a representative to that conference, but upon reconsideration decided that we would hold to our standing policy of not becoming involved in negotiating the settlement of violations of 33 USC 403. Should the Corps elect to initiate legal action we will, upon request, be willing to provide biological expertise in appraising the ecological impact of this illegal work. If it is decided to require the applicant to plug the canal and apply for an after-the-fact permit we will make a biological appraisal of the work and submit appropriate comments and recommendations to the Corps. Our tentative feeling is that this short dead-end canal would not cause significant damage beyond that which would have been occasioned by complete filling of the submerged lands as authorized by both the initial and modified versions of the Roberts Bay permit.

In our routine surveillance and reporting of dredge-and-fill violations at Marco Island and across the Nation, we consider that a useful purpose is served by reporting even those violations that do not result in significant damage to fish and wildlife resources. Developers and other interests are thereby put on notice that the undertaking of unpermitted work or the ad libitum modifications of permitted work may be detected and reported, with possible serious legal consequences for violators.

It is hoped that the Corps will take more appropriate action on the Arcadia Waterway violation than it has apparently seen fit to take with regard to certain other violations at Marco Island. To our knowledge the massive unpermitted dredge-and-fill activities in Clam Bay and Smokehouse Bay, reported to the Corps of Engineers in 1971 (See item 3 of Department of the Interior submittal in response to the Subcommittee's question 20.), have not yet become the subject of after-the-fact permitting activity or other administrative or legal action by the Corps. The Corps requested Marco Island Development Corporation to ". . . cease all operations in this area until the work has been properly authorized by Department of the Army Permits" (Exhibit 10). Although the work has now been completed, there has been no issuance of a public notice of after-the-fact permit application. Numerous building lots have been sold and residences constructed in this portion of Marco Island.

2.c. Tidal Creek - McIlvane Bay

The Bureau of Sport Fisheries and Wildlife's April 20 letter to the Corps (Exhibit 11) did not refer to the subject letter as a "tidal creek," nor did that letter argue that areas of tidal influence had been violated, although it is possible

that such was the case. We are, therefore, uncertain why the Corps chose to describe the creek as "tidal". The emphasis of our report was that a navigable waterway had been altered by the unpermitted construction. The Corps has not disputed this.

By letter of August 24, 1973 (Exhibit 12), the Corps responded to our report of this apparent violation. They found that ". . . the creek turned as it approached the roadway (dike) in question and went in a southeasterly direction for only a short distance." Examination of a field drawing (Exhibit 13) by the Bureau biologist who investigated this violation indicates that the creek did begin just south of the dike to turn from its northerly course and to swing in a northeasterly direction. If the creek (prior to being filled) had continued to turn, it might eventually have formed a loop and continued southeast as the Corps has reported. However, we doubt the physical possibility for this to have occurred without at least a portion of the creek extending into the area now occupied by the dike and the filled area beyond.

The two concluding statements in the Corps' August 24 letter, were: (1) Therefore we have no evidence of a violation having occurred which would require a permit or enforcement action by this office," and (2) "If substantial evidence can be provided to prove a violation exists, we will, upon receipt of this evidence, take appropriate action." Each of these statements is susceptible to two contrasting interpretations. Statement (1) means either that (a) a violation has occurred, but not one that would require a permit or enforcement action, or (b) that no permit or enforcement action is required, since no violation has occurred. Statement (2) could mean (a) that there is evidence of a violation, but that the evidence is not substantial enough to prove (to the Corps' satisfaction) that a violation exists or (b) that evidence of a violation does not exist, but if substantial evidence can be provided, the Corps will take appropriate action.

Therefore, we are still uncertain as to what the Corps' actual findings were. Their August 24 letter apparently indicates that they have taken a more conclusive position than that described in their supplemental submittal to the Subcommittee. We do not know whether Deltona furnished the Corps with the requested survey information (page 5 of the Corps submittal) or whether this information influenced the Corps final conclusions.

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

SAJSC Permits (73-0284)

26 March 1973

Regional Director, S. E. Region, U.S.D.I.
Bureau of Sport Fisheries & Wildlife
809 Peachtree - 7th Building
Atlanta, Georgia 30303

Dear Sir:

Reference is made to above numbered application for a Department of the Army permit. The proposed construction, as shown on inclosed print, is considered to be minor work.

We have no objections to the proposed work and plan to issue a letter-type permit without public notice two weeks from the date of this letter. Should your agency have objections to this procedure, please so inform us, with reasons therefor, prior to that date.

Sincerely yours,

B. N. GOODE
Chief, Permits & Statistics Branch

1 Incl
Print

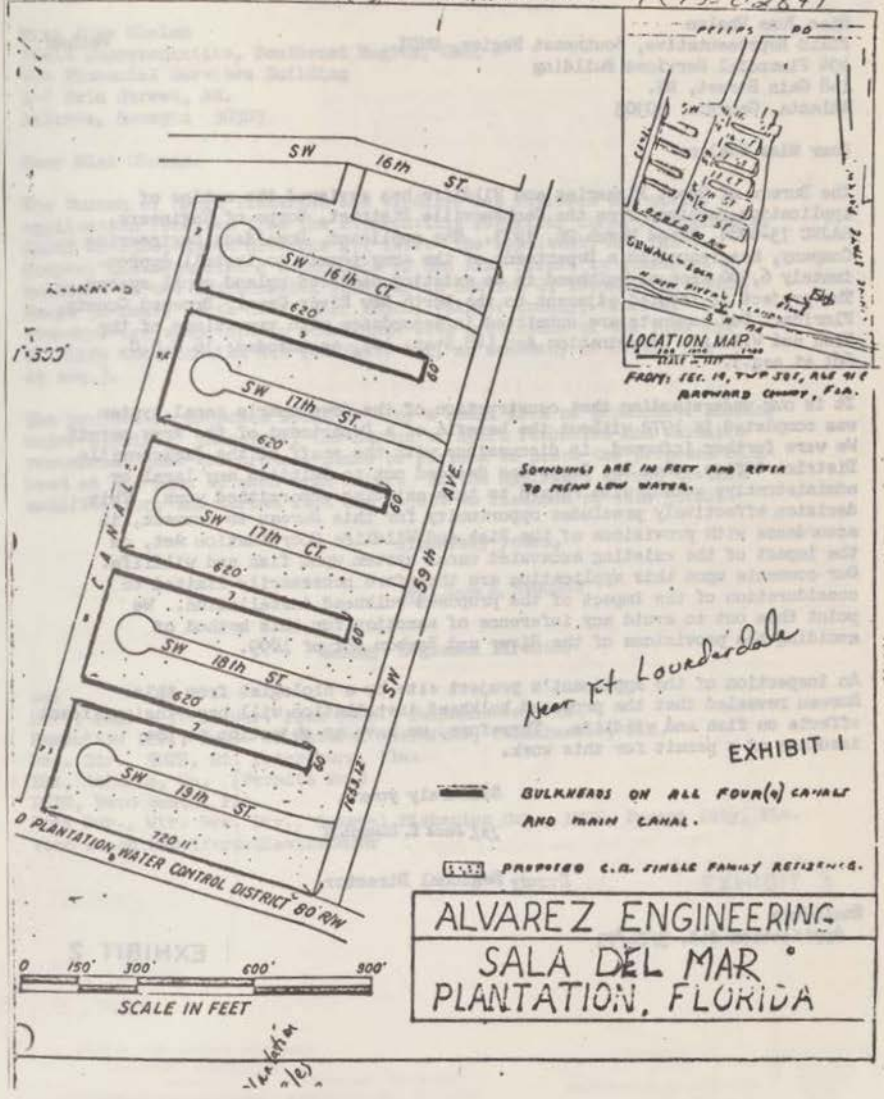
Copy furnished (w/incl):
Field Supervisor
Bureau of Sport Fisheries & Wildlife
P. O. Box 2676
Vero Beach, Florida 32960

ext. to 23 April '73

SAJ FL 580
6 Dec 72

EXHIBIT I

2400' of canals
over 5400' of bulkheading P(73-0284)



May 1, 1973

Miss June Whelan
Field Representative, Southeast Region, USDI
404 Financial Services Building
148 Cain Street, NE.
Atlanta, Georgia 30303

Wathen

Dear Miss Whelan:

The Bureau of Sport Fisheries and Wildlife has reviewed the notice of application received from the Jacksonville District, Corps of Engineers, SAJSC 73-0284, dated March 26, 1973. The applicant, Donaldson Engineering Company, has requested a Department of the Army permit to install approximately 6,500 feet of bulkhead in an existing dead-end upland canal system. The project is located adjacent to the North New River Canal, Broward County, Florida. Our comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

It is our understanding that construction of the developer's canal system was completed in 1972 without the benefit of a Department of the Army permit. We were further informed, in discussions with the staff of the Jacksonville District Office, that the Corps has decided not to initiate any legal or administrative action with regard to this existing unpermitted work. This decision effectively precludes opportunity for this Bureau to comment, in accordance with provisions of the Fish and Wildlife Coordination Act, on the impact of the existing excavated canal system upon fish and wildlife. Our comments upon this application are therefore necessarily limited to consideration of the impact of the proposed bulkhead installation. We point this out to avoid any inference of sanction for this method of avoiding the provisions of the River and Harbor Act of 1899.

An inspection of the applicant's project site by a biologist from this Bureau revealed that the proposed bulkhead installation will have insignificant effects on fish and wildlife. Therefore, we have no objection to the issuance of a permit for this work.

Sincerely yours,

/s/ Jack E. Romphill

Deputy Regional Director

Enclosure
Application dtd. 3/26/73

EXHIBIT 2

January 18, 1973

Miss June Whelan
Field Representative, Southeast Region, USDI
404 Financial Services Building
148 Cain Street, NE.
Atlanta, Georgia 30303

Dear Miss Whelan:

The Bureau of Sport Fisheries and Wildlife has reviewed the notice of application received from the Jacksonville District, Corps of Engineers, SAJSP 72-1300, dated November 27, 1972. The applicant, Mr. Dan B. Cooper, has requested a Department of the Army permit to construct a bulkhead in the Intracoastal Waterway in Section 2, Township 12 South, Range 30 East, north of Flagler Beach, Flagler County, Florida. Our comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The project as proposed would destroy a small area of productive shallow water habitat. Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the project plans be revised to place the proposed bulkhead at the line of mean high water. If the applicant agrees to this modification, the Bureau will not object to issuance of this permit.

Sincerely yours,

/s/ Jack E. Hemphill

Acting Regional Director

cc:
Dir., Game & Fresh Wtr. Fish Comm., Tallahassee, Fla.
Executive Dir., Dept. of Natural Resources, Tallahassee, Fla.
Reg. Dir., NMFS, St. Petersburg, Fla.
EPA, Atlanta, Ga. (Permits Br.)
DRBS, Vero Beach, Fla.
Area Sup., Wtr. Res. Div., Coastal Fisheries Cnt., NMFS, Panama City, Fla.
Vero Beach:RFWelford:GDavidson:hr

EXHIBIT 3

4

DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
400 West Bay Street, P.O. Box 4970
Jacksonville, Florida 32201

PUBLIC
NOTICE

SAJSP Permits (72-1300)

27 November 1972

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army permit as described below:

APPLICANT: Mr. Dan B. Cooper
P. O. Box 985
Flagler Beach, Florida 32036

WATERWAY: Intracoastal Waterway, Jacksonville to Miami, Land Cut
Matanzas River to Smith Creek

WORK: To construct a bulkhead in said waterway in Section 2, Twp. 12 S., Rge. 30 E., north of Flagler Beach, Flagler County, Florida, as shown on drawing on reverse side of this notice.

RECEIVED
NOV 30 1972
U.S. DEPT. OF THE INTERIOR
Bureau of Sport Fisheries & Wildlife

This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on the public interest. Factors affecting the public interest include, but are not limited to, navigation, fish and wildlife, water quality, economics, conservation, aesthetics, recreation, water supply, flood damage prevention, ecosystems, and, in general, the needs and welfare of the people.

Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit.

Plans of the proposed work may be seen at the office of the District Engineer at the above address.

Comments regarding the application should be submitted to the District Engineer at the above address on or before 27 December 1972.

FOR THE DISTRICT ENGINEER:

Gail G. Oren
GAIL G. OREN
Chief, Operations Division

Regional Director, SE Region
Bureau of Sport Fisheries & Wildlife
809 Peachtree- 7th Building
Atlanta, Georgia 30303

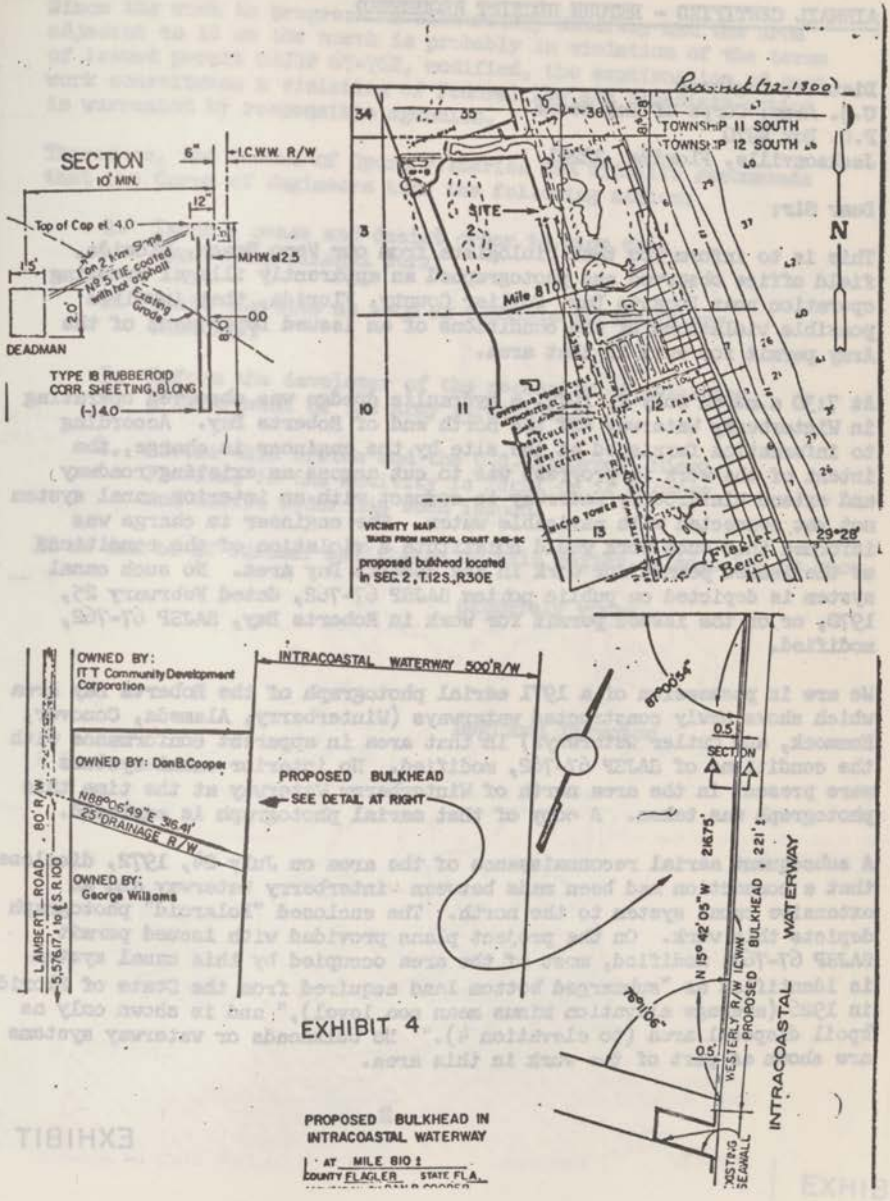
EXHIBIT 4

IMPORTANT
This is NOT a circular.

DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, JACKSONVILLE
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE ARMY
DOD-314


SECTION
10' MIN.
6"
I.C.W.W. R/W
12"
Top of Cap el. 4.0
1.5'
Con 2 ½m Strip
#9 STIE coated
with hot asphalt
M.H.W. el 2.5
2.0'
Existing
Grade
0.0
8.0'
DEADMAN
TYPE 18 RUBBEROID
CORR. SHEETING, ALONG
(-) 4.0
TOWNSHIP 11 SOUTH
TOWNSHIP 12 SOUTH
SITE
Mile 810
N
VICINITY MAP
proposed bulkhead located
in SEC. 2, T.12S., R.30E
Flagler
Beach
29°28
OWNED BY:
ITT Community Development
Corporation
OWNED BY: Dan B. Cooper
OWNED BY:
George Williams
INTRACOASTAL WATERWAY 500' R/W
PROPOSED BULKHEAD
SEE DETAIL AT RIGHT
N89°05'49"E 316.41'
25' DRAINAGE R/W
80' R/W
LAMBERT ROAD
S.R. 100
5,576.17' to ℄
S 89°05'49" E
0.5'
SECTION
216.75'
N 13° 42' 05" W
BULKHEAD
221'±
WESTERLY R/W I.C.W.W.
PROPOSED
EXISTING
SEAWALL
INTRACOASTAL
WATERWAY
EXHIBIT 4
PROPOSED BULKHEAD IN
INTRACOASTAL WATERWAY
AT MILE 810 ±
COUNTY FLAGLER STATE FLA.

August 1, 1972

AIRMAIL CERTIFIED - RETURN RECEIPT REQUESTED

District Engineer
U.S. Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This is to inform you that biologists from our Vero Beach, Florida, field office observed and photographed an apparently illegal dredging operation near Roberts Bay, Collier County, Florida, that involves possible violations of the conditions of an issued Department of the Army permit for work in that area.

At 7:30 a.m. on July 2, 1972, a hydraulic dredge was observed operating in Winterberry Waterway off the north end of Roberts Bay. According to information furnished at the site by the engineer in charge, the intent of the work in progress was to cut across an existing roadway and extend Winterberry Waterway to connect with an interior canal system not yet connected with navigable water. The engineer in charge was informed that such work would constitute a violation of the conditions of the issued permit for work in the Roberts Bay area. No such canal system is depicted on public notice SAJSP 67-762, dated February 25, 1970, or on the issued permit for work in Roberts Bay, SAJSP 67-762, modified.

We are in possession of a 1971 aerial photograph of the Roberts Bay area which shows newly constructed waterways (Winterberry, Alameda, Conover, Hammock, and Cutler Waterways) in that area in apparent conformance with the conditions of SAJSP 67-762, modified. No interior canal systems were present in the area north of Winterberry Waterway at the time this photograph was taken. A copy of that aerial photograph is enclosed.

A subsequent aerial reconnaissance of the area on July 24, 1972, disclosed that a connection had been made between Winterberry Waterway and an extensive canal system to the north. The enclosed "Polaroid" photograph depicts this work. On the project plans provided with issued permit SAJSP 67-762, modified, most of the area occupied by this canal system is identified as "submerged bottom land acquired from the State of Florida in 1926 (average elevation minus mean sea level)," and is shown only as "spoil disposal area (to elevation 4)." No bulkheads or waterway systems are shown as part of the work in this area.

EXHIBIT 5

Since the work in progress in Winterberry Waterway and the area adjacent to it on the north is probably in violation of the terms of issued permit SAJSP 67-762, modified, the continuation of such work constitutes a violation of Federal law and immediate action is warranted by responsible agencies.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers take the following action:

1. Issue a cease and desist order to stop this apparently illegal work;

2. Visit the site as soon as possible to verify our findings;

3. Inform the developer of the necessity of obtaining a Department of the Army permit; and,

4. Advise this office and the U.S. Attorney, Miami, Florida, if the activity is legal or if a cease and desist order has been issued.

If we can be of further assistance on this matter, please let us know.

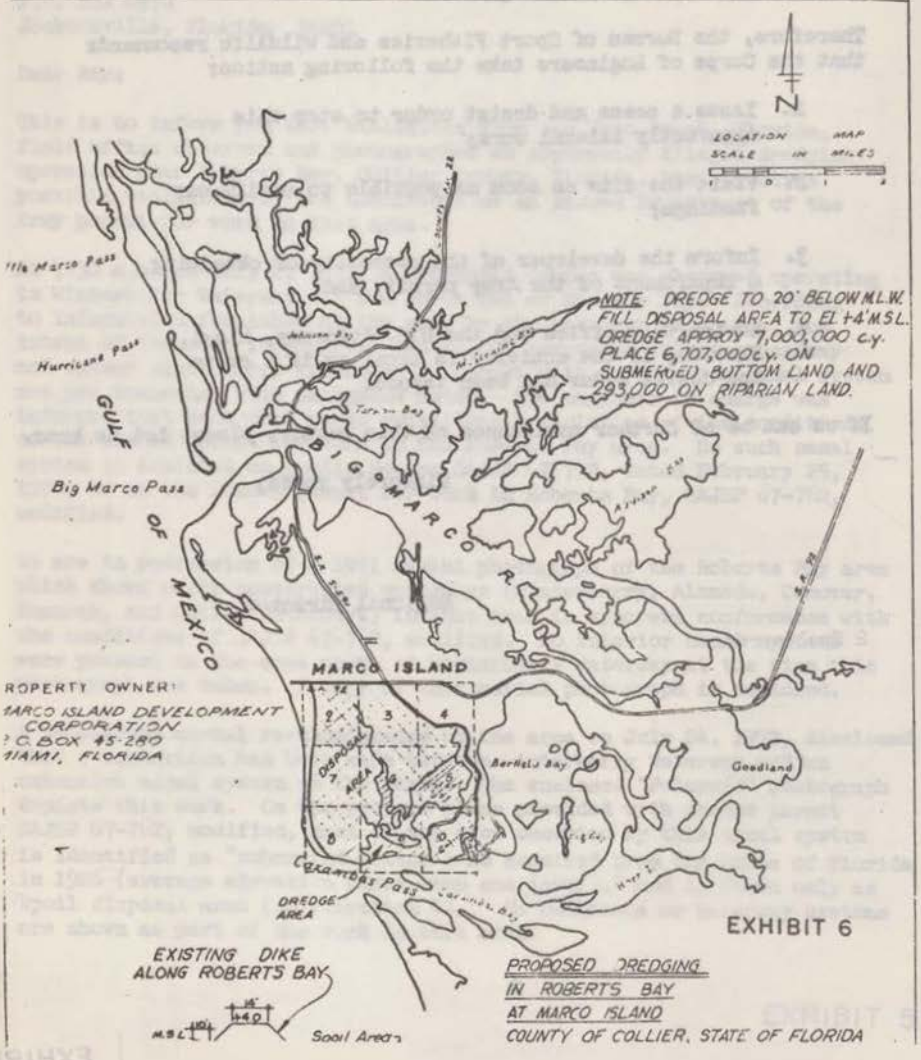
Sincerely yours,

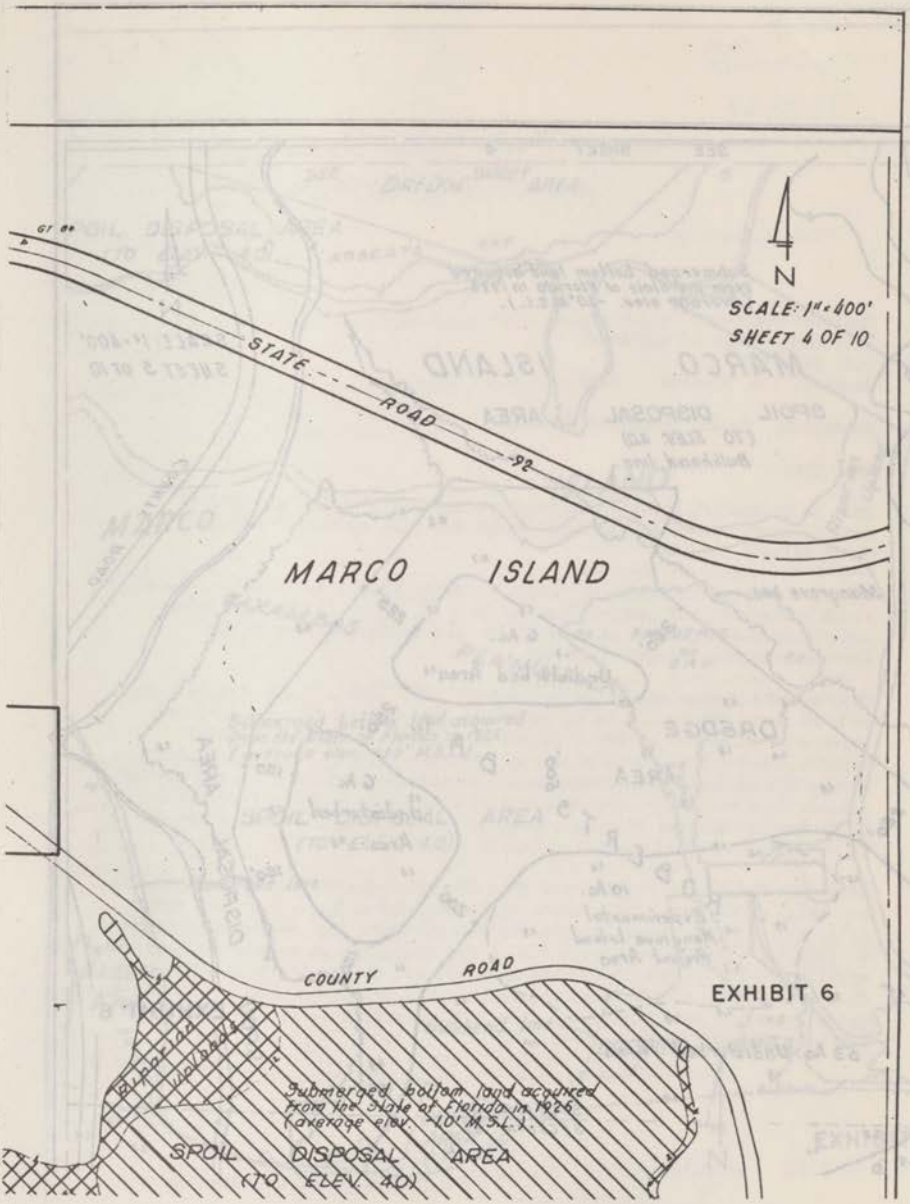
Regional Director

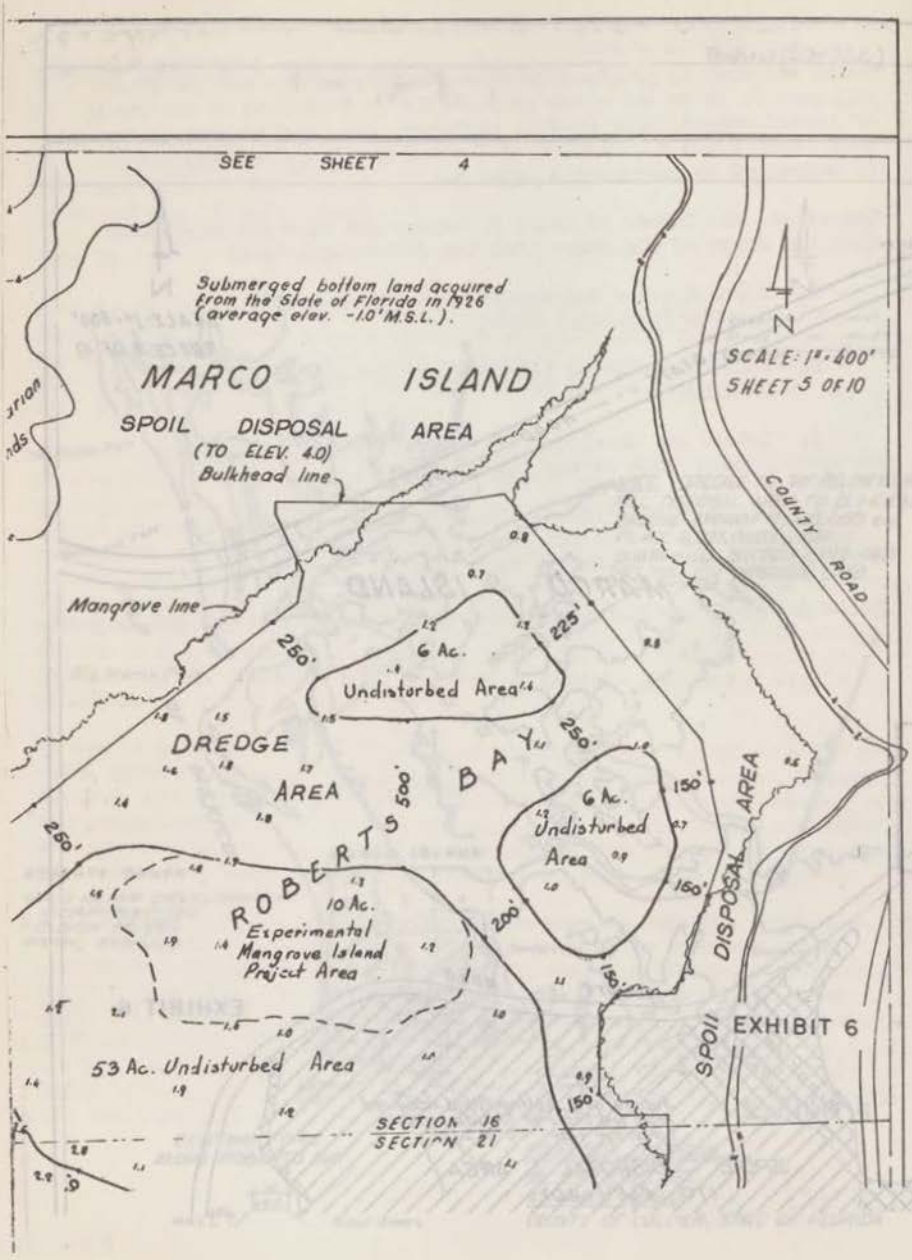
2 Enclosures

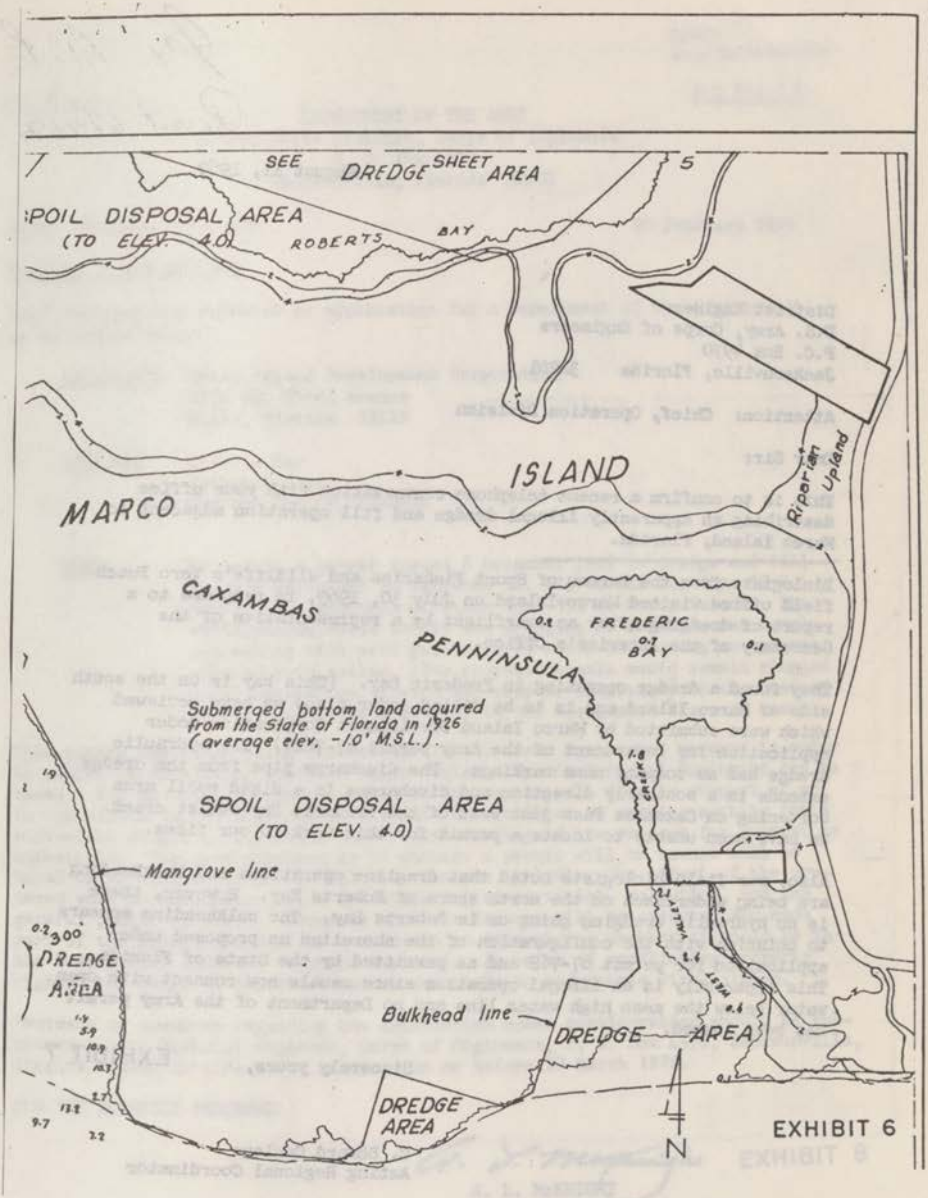
EXHIBIT

PERMIT (67-762)




N
SCALE: 1"=400'
SHEET 4 OF 10
STATE ROAD 92
MARCO ISLAND
COUNTY ROAD
EXHIBIT 6
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -10' M.S.L.)
SPOIL DISPOSAL AREA
(TO ELEV. 40)


SEE SHEET 4
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -1.0' M.S.L.).
MARCO ISLAND
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
Bulkhead line
Mangrove line
6 Ac. Undisturbed Area
DREDGE AREA
ROBERTS BAY
6 Ac. Undisturbed Area
10 Ac. Experimental Mangrove Island Project Area
53 Ac. Undisturbed Area
SECTION 16
SECTION 21
SPOIL DISPOSAL AREA
COUNTY ROAD
N
SCALE: 1" = 400'
SHEET 5 OF 10
EXHIBIT 6


SEE DREDGE SHEET AREA 5
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
ROBERTS BAY
MARCO ISLAND
Riparian Upland
CAXAMBAS PENNINSULA
FREDERIC BAY
Submerged bottom land acquired from the State of Florida in 1926 (average elev. -10' M.S.L.).
SPOIL DISPOSAL AREA
(TO ELEV. 4.0)
Mangrove line
300'
DREDGE AREA
Bulkhead line
DREDGE AREA
DREDGE AREA
N
EXHIBIT 6

Jay. Co., Fla.
Permit 67-762

August 11, 1969

District Engineer
U.S. Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Attention: Chief, Operation Division

Dear Sir:

This is to confirm a recent telephone conversation with your office describing an apparently illegal dredge and fill operation adjacent to Marco Island, Florida.

Biologists from the Bureau of Sport Fisheries and Wildlife's Vero Beach field office visited Marco Island on July 30, 1969, in response to a report of dredging after an overflight by a representative of the Secretary of the Interior's Office.

They found a dredge operating in Frederic Bay. (This bay is on the south side of Marco Island and is to be filled under plans we have reviewed which were submitted by Marco Island Development Corporation under application for Department of the Army permit 67-762.) The hydraulic dredge had no company name markings. The discharge pipe from the dredge extends in a southerly direction and discharges in a diked spoil area bordering on Caxambas Pass just west of the Frederic Bay outlet creek. We have been unable to locate a permit for this work in our files.

Also, our field biologists noted that dragline operations and bulkheading are being undertaken on the north shore of Roberts Bay. However, there is no hydraulic dredging going on in Roberts Bay. The bulkheading appears to coincide with the configuration of the shoreline as proposed under application for permit 67-762 and as permitted by the State of Florida. This apparently is an illegal operation since canals now connect with open water below the mean high water line and no Department of the Army permit has been issued.

Sincerely yours,

EXHIBIT 7

C. Edward Carlson
Acting Regional Coordinator

Realty
River Basin Studies

PUBLIC NOTICE

DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

SAJSP Permits (67-762) 25 February 1970

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army permit as described below:

APPLICANT: Marco Island Development Corporation
3250 SW. Third Avenue
Miami, Florida 33129

WATERWAY: Roberts Bay
Caxambas Pass
Collier County, Florida

WORK: To modify a permit issued 8 December 1969 to dredge and fill in said waterways in Sections 16, 17, 20 and 21, Twp. 52 S., Rge. 26 E., westerly of State Road 591 at Marco Island. The modification would permit the dredging of twenty-seven canals connecting with said waterways as shown on drawing on reverse side of this notice. [The proposed canals would remain plugged until excavation of each waterway is completed] and the dredged material would be deposited in the designated disposal areas.

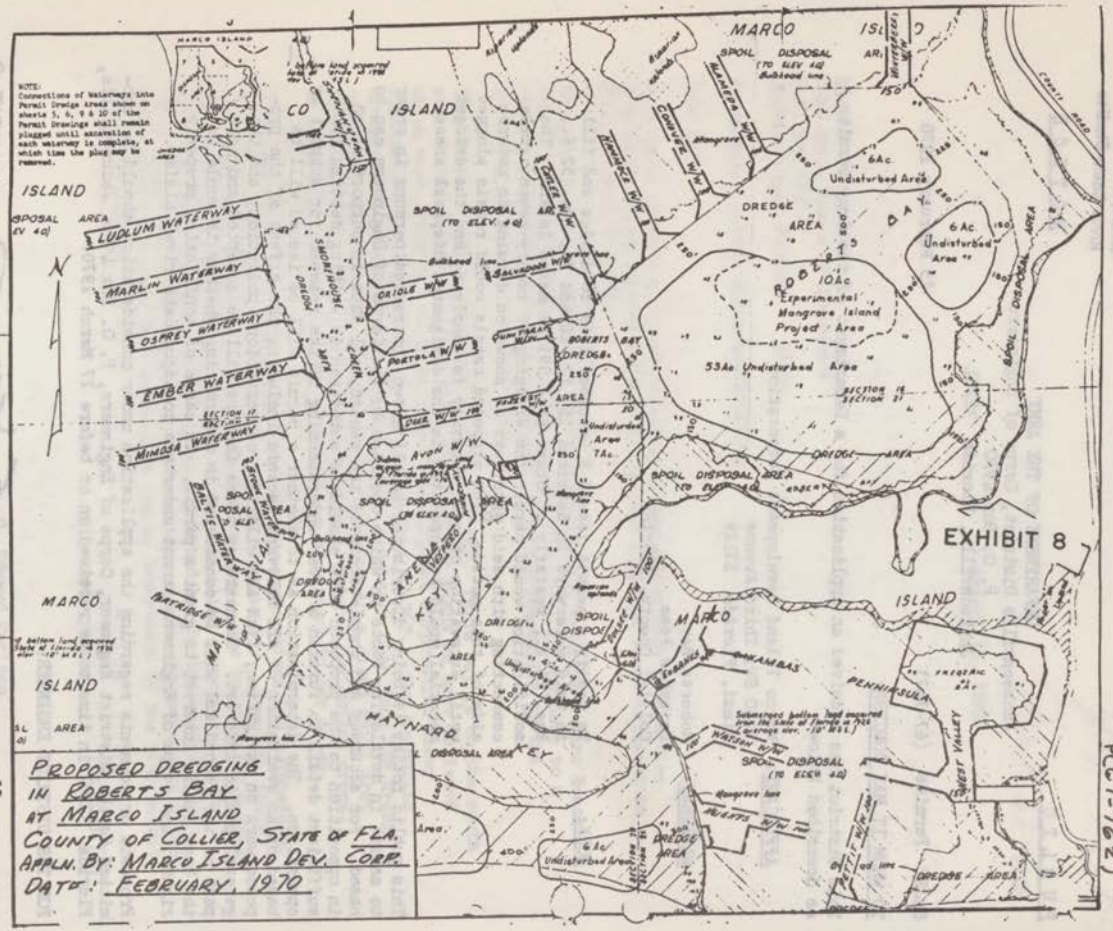
This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The determination as to whether a permit will be issued will be based on an evaluation of all relevant factors including the effect of the proposed work on navigation, fish and wildlife, conservation, pollution, and the general public interest. Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit. In cases of conflicting property rights, the Corps of Engineers cannot undertake to adjudicate rival claims.

Protests or comments regarding the application under consideration should be submitted to the District Engineer, Corps of Engineers, P. O. Box 4970, Jacksonville, Florida 32201 in time to be received on or before 27 March 1970.

FOR THE DISTRICT ENGINEER:

A. L. McKNIGHT
Chief, Operations Division

EXHIBIT 8



71-61 (A.J.K.M.)

P(67-76Z)

280

JAN 1 2 1968

cc

January 12, 1968

Ack of Letter to File

Mr. J. H. Turner
County Engineer
Collier County Board of County Commissioners
Naples, Florida 33940

Dear Mr. Turner:

Application by Marco Island Development Corp. for a dredge-fill permit in Roberts Bay and Smokehouse Creek, Marco Island, Collier County, Florida

Our Marine Biologists, Charles Futch and Robert Routa, accompanied by P. K. Jones, U. S. Bureau of Sports Fisheries and Wildlife, have made a biological and ecological survey of the subject area. Mr. Futch's conservation report, including various maps and tables, is attached to this letter of transmittal.

Your cooperation in implementing Section 253.12, Florida Statutes, as amended by Chapter 67-393, is appreciated.

Sincerely,

Randell Bill

K. D. Woodburn
Marine Biologist

cc: Messrs. Arthur Day, John DuBose, Arthur Marshall, Charles Futch, Robert Routa, Lt. B. E. Hendrix

KDW/sc

att.

EXHIBIT 9

Conservation Survey Report--Application by Marco Island Development Corp. for a dredge-fill permit in Roberts Bay and Smokehouse Creek, Marco Island, Collier County, Florida.

Proposed project plans include dredging of Smokehouse Creek, Roberts Bay, and existing connecting channels to fill existing upland to an elevation of +4.00 feet M.S.L., and further raising the upland to an elevation of +5.50 feet M.S.L. by excavation of interior waterways. Approximately 75% of the proposed dredge area is owned by the Marco Island Development Corporation by virtue of a deed for submerge bottom lands from the State of Florida in 1926. The remainder of the dredge area is sovereign land. The proposed upland fill area is owned by the applicant. Maps I through IV show the existing bulkhead line and ownership of submerged land. For purposes of this report, dredge areas have been designated "AREAS A through G".

DREDGE AREA A (Map I): DREDGING IN THIS AREA SHOULD HAVE LIMITED EFFECTS UPON MARINE RESOURCES. Apparently he made no survey of Smokehouse Creek.

Smokehouse Creek has apparently been sealed off by growth of red mangroves at the location so indicated on the map.

DREDGE AREA B (Map II): DREDGING IN THIS AREA WOULD DEFINITELY HAVE ADVERSE EFFECTS UPON MARINE RESOURCES.

Bay

Water depth in Roberts Bay is approximately four feet. The soft mud bottom supports moderately heavy scattered patches of Halophila, an attached seagrass. Attached and unattached algae, including Caulerpa, Gracilaria, Acetabularia, Acanthophora, Halimeda, and Dictyota, are extremely abundant in Roberts Bay. These plants are of utmost importance in marine conservation. Collections of flora and fauna were made with a small (10 foot) otter trawl. Eight species of fishes including lane snapper, mangrove snapper, and sheepshead were taken in Roberts Bay. Many mullet were observed. Among the fishes collected were 485 anchovies. These schooling fishes are an important source of food for many sport and commerical fishes. Many species of decapod crustaceans (shrimps and crabs) were collected, including juvenile pink shrimp, small blue crabs, one small stone crab, and other small unidentified species. These are also an important source of food for sport and commercial fishes. Large blue crabs and 'coon oysters were observed in the north end of Robert Bay. Complete collection data for this dredge area is included in Appendix I.

Other collections of animals were made during past ecological surveys of nearby areas (See map entitled "Location of Study Area and Other Pertinent Collections"). Collections from Gullivan Bay, Tarpon Bay, Pumpkin Bay and Fakahatchee Bay in September of 1967 yielded four species of attached seagrasses, and 12 species of algae [illegible] species of invertebrate animals including pink shrimp, bl[illegible] stone crabs were collected from this area. Twenty-nine species of fishes, including anchovies, black sea bass, sand perch, lane snapper, spotted sea trout, sheepshead and spadefish, were collected in this area. Please refer to Appendix II for complete collection data for this area.

EXHIBIT 9

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT. CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE. FLORIDA 32201

SAJSP Permits

14 September 1971

Mr. J. Edward Burgess
Staff Director
Committee of Natural Resources
Room 2221 Holland Bldg.
Tallahassee, Florida 32304

Dear Mr. Burgess:

In reply to your letter of 4 August 1971, information is furnished that no Department of the Army permit has been issued to Marco Island Development Corporation for work in Sections 5, 6, 7 and 8; Township 52S; Range 26E; Collier County, Florida.

An on-site inspection was conducted by representatives of the Corps of Engineers on 10 September 1971 confirming that work of an illegal nature had been performed.

Accordingly, Marco Island Development Corporation has been requested this date to cease all operations in this area until the work has been properly authorized by Department of the Army permits.

Sincerely yours,

Gail G. Gren

GAIL G. GREN
Chief, Operations Division

EXHIBIT 10

EXHIBIT 9

AIRMAIL - CERTIFIED - RETURN RECEIPT REQUESTED

April 20, 1973

District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This is to confirm a telephone call by our Vero Beach, Florida, field office to Mr. Glen Roberson of your staff at 10:15 a.m. on April 9, 1973, regarding an apparent illegal dredge and fill operation that was observed and photographed on April 4, 1973.

The project is located just east of State Road 951, two miles north of the Marco Island Bridge toll booth, Collier County, Florida. The developer, Deltona Corporation, has diked across a navigable creek and dredged and filled in its upper reaches. Valuable wetland habitat, principally red mangrove, was present prior to construction of the dike and alteration of the area above it. This creek is navigable up to the southern boundary of the diked and filled area, as demonstrated by our field biologist who was able to paddle a canoe from McIlvaine Bay, under State Road 951, and thence along the creek to the base of the developer's dike. An aerial photograph of the area is enclosed, with overlay, showing the canoe route taken. We are having copies made of transparencies taken on the ground and will forward them to you shortly.

We understand that a Department of the Army permit has not been issued for this project. If a permit is required, the continuation of these unpermitted activities constitutes a violation of Federal law and immediate action is warranted by responsible agencies.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers take the following action:

1. Issue a cease and desist order to stop this apparently illegal work;

2. Visit the site as soon as possible to verify our findings;

EXHIBIT II

3. Inform the developer of the necessity of obtaining a Department of the Army permit; and

4. Advise this office and the U.S. Attorney, Miami, Florida, within 7 days of receipt of this letter if the activity is legal or if a cease and desist order has been issued.

If we can be of further assistance on this matter, please let us know.

Sincerely yours,

Regional Director

Enclosure

EXHIBIT 11

12

RMA

RBS

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

SAJSE

24 August 1973

Mr. Jack E. Hemphill
Deputy Regional Director
United States Department of the Interior
Bureau of Sport Fisheries and Wildlife
17 Executive Park Drive, N. E.
Atlanta, Georgia 30329

Dear Mr. Hemphill:

Reference is made to your letter of 20 April 1973 concerning an apparent illegal dredge and fill operation located just east of State Road 951 and north of Macilvane Bay, Collier County, Florida.

The dredge and fill project in question was brought to our attention on 1 February 1971 when Mr. James Vensel of the Deltona Corporation informed us of their plans to build a golf course at this site. Since that date the Deltona Corporation has kept us informed of their progress at this project. However, an investigation of the project was made by a representative of this office on 15 May 1973. This investigation revealed that all work appeared to be above the mean high water line. In addition, a review of aerial photos in this office revealed that the creek turned as it approached the roadway (dike) in question and went in a southeasterly direction for only a short distance. Therefore, we have no evidence of a violation having occurred which would require a permit or enforcement action by this office.

If substantial evidence can be provided to prove a violation exists, we will, upon receipt of this evidence, take appropriate action.

Sincerely yours,

Gail G. Gren

GAIL G. GREN
Chief, Operations Division

EXHIBIT 12

GH
2 GREEN
3 HEMPHILL
1 5 DAVIDSON
SCOTT
4 WATHEN
WELFORD
YOUNGBLOOD
COLLINS
ANDREWS
BURNS
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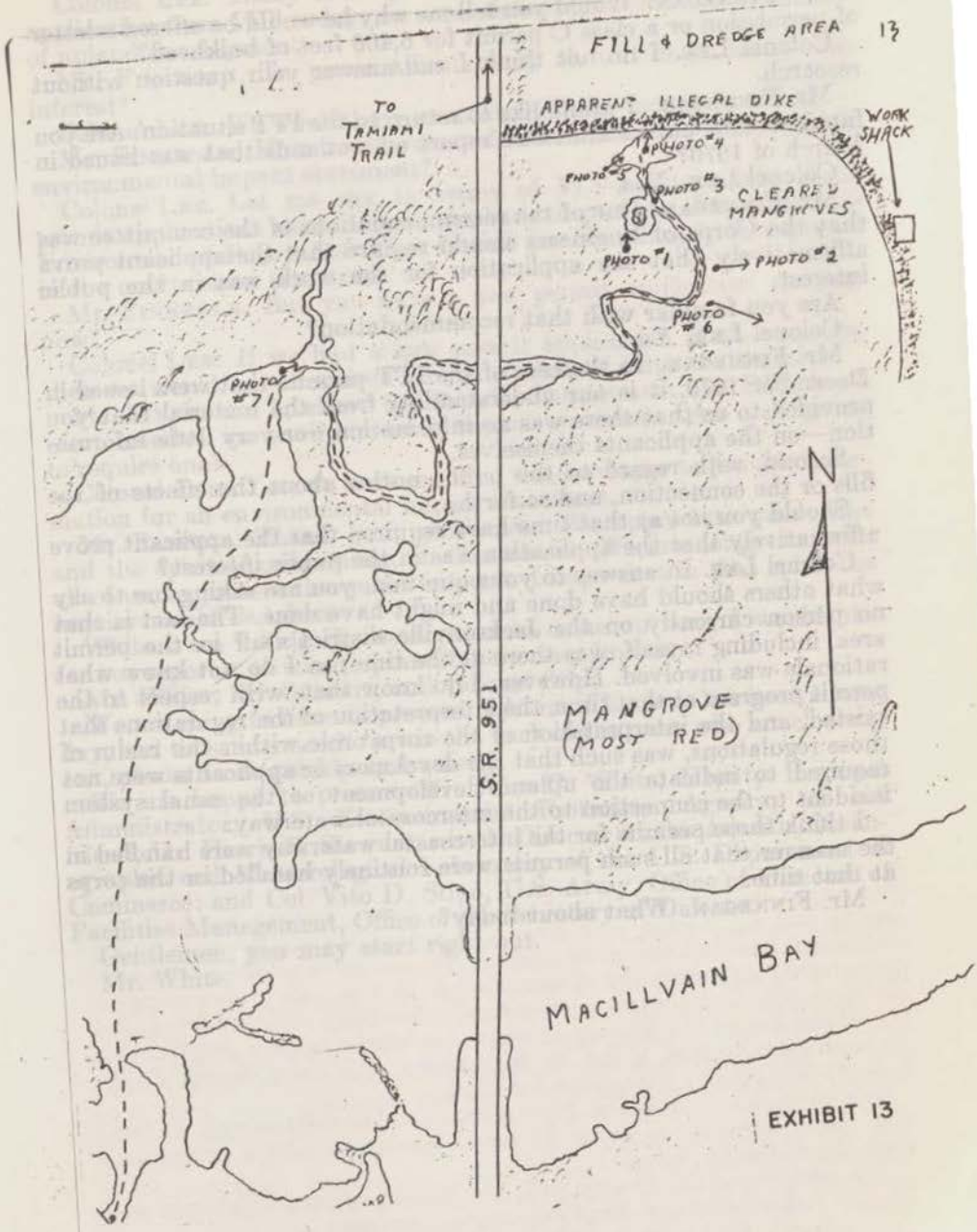
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S.R. 951
MANGROVE (MOST RED)
MACILLVAIN BAY
EXHIBIT 13

Mr. FINNEGAN. Would you tell me why he would be offered a letter of permission or a class C permit for 6,400 feet of bulkhead?

Colonel LEE. I do not think I can answer your question without research.

Mr. FINNEGAN. I would like to return to the ITT situation. Are you familiar with our committee's report on wetlands that was issued in March of 1970?

Colonel LEE. Yes.

Mr. FINNEGAN. One of the recommendations of the committee was that the Corps of Engineers should require that the applicant prove affirmatively that the application for the work was in the public interest.

Are you familiar with that recommendation?

Colonel LEE. Yes.

Mr. FINNEGAN. In the case of the ITT permits that were issued in December 1970, it is our understanding from the material that you provided to us that there was no information—or very little information—on the applicants themselves.

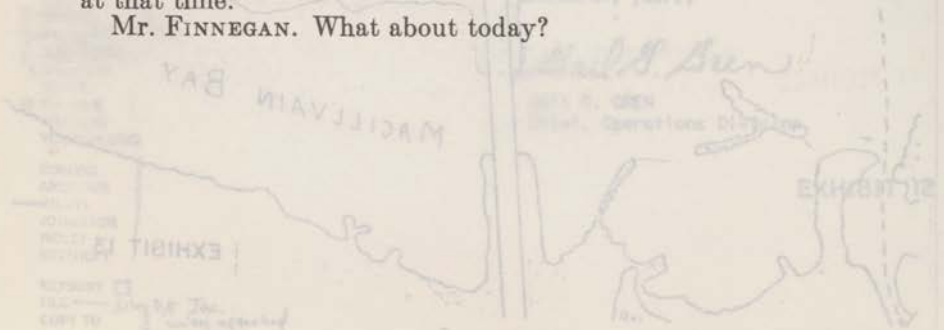
Second, with regard to the public notice about the effects of the fills or the connection, and so forth:

Should you not at that time have required that the applicant prove affirmatively that the application was in the public interest?

Colonel LEE. In answer to your question, you are asking me to say what others should have done and might have done. The fact is that no person currently on the Jacksonville district staff in the permit area, including myself, was there at the time; so I do not know what rationale was involved. However, I do know that, with respect to the permit program at that time, the interpretation of the regulations that existed, and the interpretation of the corps' role within the realm of those regulations, was such that the developers or applicants were not required to indicate the upland development or the canal system incident to the connection to the intercoastal waterway.

I think those permits for the intercoastal waterway were handled in the manner that all such permits were routinely handled in the corps at that time.

Mr. FINNEGAN. What about today?



Colonel LEE. Today it is quite different. If we were taking the application from ITT today, we most definitely would ask for a plan of upland development.

Mr. FINNEGAN. To prove affirmatively that it is in the public interest?

Colonel LEE. We would have evaluated all the factors involved.

Mr. FINNEGAN. How would you evaluate it? Would you prepare an environmental impact statement?

Colonel LEE. Let me say in terms of ITT-Levitt, again those permit applications were close on the heels of passage of the National Environmental Policy Act. That statute has been largely interpreted in the courts since that time.

Mr. FINNEGAN. But you have a new permit application pending now?

Colonel LEE. If we had a new permit application of that nature, then we would have required an environmental impact statement.

Mr. FINNEGAN. I believe the Interior Department and EPA have recommended an environmental impact statement. Are you going to require one?

Colonel LEE. Yes; we have required the developer to provide information for an environmental impact statement.

Mr. FASCELL. Thank you, gentlemen. We appreciate your time and the spirit of cooperation on this matter. We are doing our best, all of us, to protect the public interest. I hope that in that spirit the inquiry would be taken.

While I am asking the next panel to come up here, I would like for our reporter to stand up and take a deep breath.

Mr. White, Mr. Stewart, and Colonel Stipo.

We are going to have to proceed right on. I know it has been a long day, and those of you who are in the back of the room who are clearing out, please do so quickly and quietly.

We are happy to present Mr. John C. White, Deputy Regional Administrator, U.S. Environmental Protection Agency; an old friend, Dr. Harris B. Stewart, who is Director at the Atlantic Oceanographic and Meteorological Laboratory of the U.S. Department of Commerce; and Col. Vito D. Stipo, U.S. Army, Office of Director of Facilities Management, Office of the Secretary of Defense.

Gentlemen, you may start right out.

Mr. White.

STATEMENT OF JOHN C. WHITE, DEPUTY REGIONAL ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY JOSEPH FRANZMATHES, WATER PROGRAMS DIVISION; CHARLES SEVER, GROUND WATER HYDRAULOGIST; MICHAEL CARTER, FIELD INVESTIGATION, NAPLES, FLA.; DAVID R. HOPKINS, LOWER FLORIDA ESTUARY STUDY, FORT LAUDERDALE; GARY D. HUTCHINSON, CHIEF, WATER SUPPLY SECTION; JOAN E. ODELL, WASHINGTON OFFICE OF THE GENERAL COUNSEL; PAUL J. TRAINA, DIRECTOR, ENFORCEMENT DIVISION; E. J. HEINEN, ORLANDO, FLA.

Mr. WHITE. Thank you, Mr. Chairman, distinguished committee members. The EPA has submitted a detailed response to the April 25 letter that we received from the chairman—the green book. In addition to that, we have summarized our answers in a six-page summary that you have before you. Also, we have included in the submission a very brief addendum that changed a response to one question—question No. 16.

Mr. FASCELL. All right, Mr. White.

We will, of course, place the entire response and the addendum, including the summary, in the record. You can summarize the summary.

[The EPA response to Chairman Reuss' letter of April 25, 1973, is printed in app. 4, pp. 895–1209.]

Mr. WHITE. After seeing the previous opening remarks, and I know we are pressed for time, I do not plan to go into great detail. If you would like, I will proceed with the outline that I have.

Mr. FASCELL. Absolutely.

Mr. WHITE. In summarizing, I will touch briefly on three prime areas that you have addressed: EPA's wetland policy; our air and water enforcement activities and related programs; and the status of our waste water treatment plant construction program.

The first area is the EPA implementation of the Administrator's wetlands policy. Region IV of EPA has long maintained an active position in the preservation of wetlands water resource planning and dredge and fill permit activities. The recent Administrator's policy statement has further prompted us to establish additional review procedures, including the dissemination of the policy statement to all State pollution control agencies and consulting engineer firms, and the discussion of the impact of waste treatment facility construction on wetland resources, if any, in any reports which accompany Public Law 92–500 grant applications for funds.

We have also established good working relationships with Federal and State agencies on other Federal permits to assure compliance with the wetlands policy.

We work especially closely with the Bureau of Sport Fisheries and Marine Fisheries Service during the review process.

In general, EPA agrees with the position expressed by the Izaak Walton League relative to finger-fill canal development. However, not all dead-end canals can be classified as polluted. The physical makeup of the canal system has an important impact on the water quality in a given canal system.

We have conducted broad-based water quality studies in canals of southwest Florida and specific studies are proposed for fiscal year 1974. The Federal Water Pollution Control Act Amendments of 1972 preclude EPA from taking direct enforcement action against developers because of water quality violations in canals. However, we do recognize that water quality problems can develop, and have been using the Corps of Engineers' section 10 permit program as an enforcement tool by attaching water quality conditions to permits that are issued. We also require permit applicants to furnish evidence that standards will not be violated or to describe the means by which standards will be maintained.

We have also included copies of our comments on several Corps of Engineers' canal projects, including our letter of April 6, 1973, to the Jacksonville District on the ITT-Palm Coast Development project.

The Palm Coast Development canal system will not be considered acceptable to EPA until such time as the developer can assure us that water quality standards will not be violated after development is completed.

We therefore have recommended to the Jacksonville corps office that a permit not be issued until EPA is satisfied that the facilities to be employed in maintaining water quality standards are adequate and until an environmental impact statement is prepared. However, we have heard the corps indicate today they plan to do this.

We also requested that Palm Coast establish an escrow fund or purchase a performance bond to insure that necessary facilities will be provided at their expense. The Palm Coast Development has constructed a central sewage treatment system and EPA will recommend that there be no discharge to surface waters.

With regard to EPA's enforcement action in this area, we have been involved in two major State-Federal enforcement conferences involving the waters of Dade County. These conferences were the Dade County Enforcement Conference and the Lower Biscayne Bay Conference. The major recommendations of the three sessions of the Dade County Enforcement Conference are centered on removing waste water from the canals and providing secondary treatment of all waste. Dade County was requested to develop a master plan for implementation of these recommendations.

The county's interim plan was approved by EPA and approval of the final plans is expected by July 1973. The initiation of funding for the implementation of this plan will begin in fiscal year 1973. Compliance with other recommendations of the conference has, for the most part, been obtained. Our quarterly water enforcement reports for the periods requested have been provided. A copy of the final judgment in the *Florida Power & Light* case is included in the prepared statement. Essentially, the judgment states that the company shall cease discharge of any condenser cooling water into the Biscayne Bay on Card Sound by September 10, 1976. Immediate steps to be taken include completion of the Card Sound Canal; installation of a ground water monitoring system; continuing studies of alternative cooling methods; and procedures for restoring water by the discharge. Evaluation by regional personnel indicates that the company is in substantial compliance with the above conditions. Construction of the cooling canal system is considerably ahead of schedule.

The establishment of the national pollutant elimination discharge system requires all point source discharge in the waters of the United States to obtain Federal permits. Florida has not officially requested NPDES permitting authority. However, Governor Askew, in a letter to Mr. Ruckelshaus, did recommend several changes in the EPA guidelines, but these were not expressed as conditions precedent to Florida's acceptance of the NPDES permit program. EPA feels that the recommended changes would be incompatible with specific sections of the 1972 amendments and are therefore unacceptable. Governor Askew was informed of this by letter of April 4, 1973.

With regard to air pollution, the EPA has funded the following amounts toward the Florida air program: $591,000 for fiscal year 1972 and $700,000 for fiscal year 1973. This will be decreased to $450,000 in fiscal year 1974. Florida's air implementation plan has been fully approved, but compliance schedules for individual sources have not yet been submitted. State hearings on these schedules have recently been completed, and we expect to receive compliance schedules for all significant sources by June 1, 1973.

The region does not prepare a formal quarterly enforcement report for air pollution. The current thrust is to develop enforceable compliance schedules for sources not now in compliance with final emission limiting regulations. This will be completed by August of 1973.

Turning now to our big money program—the contruction grants program—we provided the detailed information requested on outfalls currently discharging into the ocean, or Gulf Stream, or Gulf, as well as EPA's inventory of domestic waste sources in Florida. In addition, we have provided for fiscal year 1972 State priority lists for projects to be federally funded. The State of Florida certified a total of 53 fiscal year 1972 projects to EPA: 41 were made grant offers which obligated $55 million. Increases totalling $9,600,000 were made to 34 other projects, obligating the total allocation of $65,100,000. The remaining 12 projects were either returned or held at the request of the State for section 206 funding. Preapplication conferences have been held on all of the fiscal year 1973 projects.

Very briefly that has paraphrased and gone over the six-page summary that is outlined in the order of the questions asked. I would like to say that Mr. Raven has expressed his regrets on being unable to attend, but he did have prior commitments.

I have a number of technical people with me who will be able to respond in depth to some of your questions.

Mr. FASCELL. Why don't you now identify for the record all those who are accompanying you?

Mr. WHITE. Paul Traina, director, region enforcement division; Joseph Franzmathes, water programs division; Mr. Charles Sever, who is our ground water hydraulic expert; Mr. Red Heman, who is from our Florida liaison office; Mike Carter, who heads up our field investigation in Naples; Dave Hopkins, who is winding up a study that we've had ongoing in this area from the period of 1969 to 1972; Gary Hutchinson, who heads up our water supply division; and Miss Joan Odell is here from the Washington office of the General Counsel.

Mr. FASCELL. Thank you, Mr. White. Dr. Stewart?

STATEMENT OF DR. HARRIS B. STEWART, JR., NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY JACK GEHERINGER, DIRECTOR, SOUTHEAST REGION, NOAA'S NATIONAL MARINE FISHERIES SERVICE, ST. PETERSBURG, FLA.; HARVEY BULLIS, DIRECTOR, SOUTHEAST FISHERIES CENTER, NOAA'S NATIONAL MARINE FISHERIES SERVICE, MIAMI, FLA.; EUGENE BOLLAY, PROGRAM MANAGER FOR WEATHER MODIFICATION, NOAA'S ENVIRONMENTAL RESEARCH LABORATORIES, BOULDER, COLO.; AND DR. NIEL FRANK, DEPUTY DIRECTOR, NATIONAL HURRICANE CENTER, NOAA'S NATIONAL WEATHER SERVICE

Dr. STEWART. Thank you, Mr. Fascell, Mr. Chairman, gentlemen.

I am Harris Stewart, Director of the Atlantic Oceanographic and Meteorological Laboratories, a part of NOAA's Environmental Research Laboratories, located here in Miami in Virginia Key.

NOAA in Miami presently has some 300 employees, engaged in oceanographic research, meteorological research on hurricanes and tropical cumulus clouds, fisheries research, weather forecasting including hurricanes, interpretation of satellite photographs, and support activities which include an ocean engineering development group, ship base, the ship *Researcher*, and the 65-foot R/V *Virginia Key*, and the aircraft of the Research Flight Facility.

The research and operational missions of NOAA in Miami cover a large geographic area ranging from the Southeastern United States through the Caribbean, the Gulf of Mexico, and the Atlantic Ocean. Today, however, I will limit my remarks to NOAA's involvement in the subject of these hearings—the environmental problems of the Florida area, including the coastal and other waters of the Gulf of Mexico and the Atlantic Ocean.

In Chairman Reuss' letter of April 23 to Dr. White, NOAA Administrator, a series of specific questions was posed relating to fisheries problems and to NOAA's weather modification activities in the Florida area. These will be answered in a more detailed statement to be made available to the subcommittee.

[NOTE.—NOAA's detailed response to the subcommittee's questions is printed in app. 9, pp. 2227–2304.]

Dr. STEWART. Dr. White is unable to be here, as you know, but wanted to be sure that any additional questions you might have on these two subjects could be answered in detail, so I have with me today Mr. Jack Geheringer, Director, Southeast Region, NMFS, NOAA; and R. Richard Hoaglund, both from St. Petersburg; and Mr. Harvey Bullis from Miami, Director of the Southeast Fisheries Center of NOAA's National Marine Fisheries Service. Also with me are Mr. Eugene Bollay, program manager for Weather Modification of NOAA's Environmental Research Laboratories with headquarters in Boulder, Colo.; and Dr. Niel Frank, Deputy Director of the National Hurricane Center of NOAA's National Weather Service.

The role of the National Oceanic and Atmospheric Administration in relation to the several environmental problems presently facing the Florida area is a twofold one. First, we provide warnings of impending severe natural environmental disturbances such as hurricanes, tornadoes, and storm surges and routine forecasts of changing environmental conditions such as the weather, the tides, and the nearshore currents. Concurrently, NOAA provides the nautical charts for commerce and for the many recreational boaters and provides other descriptive material and data such as the Coast Pilot series of nautical books for coastal navigators and climatic atlases.

Equally noteworthy are the many publications relating to fish and fisheries, including fish distribution atlases, resource conservation and management information, specifications on new locating and harvesting techniques, and materials designed to lead to the development of unutilized and underutilized fisheries.

As an example, I have brought with me copies of a recent NOAA publication relating to West Florida estuaries, called Florida Phase One, which is a description of the Florida estuaries. I leave this with you, Mr. Chairman, for your information and use.

Mr. FASCELL. Thank you. We will have them in the subcommittee's files.

Dr. STEWART. All of these items fall in the category of services to those individuals, organizations, and agencies who in varying degrees have requirements for these types of environmental information. So, the first part of NOAA's role in the Florida area is one of providing environmental services.

The second part of our role I like to think of as providing environmental understanding. By this I mean the basic understanding of how the atmosphere and the ocean act and interact with each other and with the land. For it is only with such information in hand that those charged with decisionmaking can make the valid value judgments that will insure the wise use of our atmosphere and our ocean and its resources.

But to be specific, NOAA, in conjunction with the University of Miami, has an array of current meters now in the ocean off Miami Beach. With the data from these we hope to obtain a better understanding of the so-called residence time of that body of water between the Gulf Stream and the beach into which the local sewer outfalls discharge their effluent.

We run a monthly trip on the R/V *Virginia Key* on which we provide ground-truth data for the overflying ERTS satellite and monitor the Gulf of Mexico loop current and the water structure of the Florida current. Incidentally, from these studies, it is quite probable that we will be able to tell Florida west coast sportfishermen where to go for the larger gamefish that seem to like the edge of the loop current.

The Southeast Fisheries Center of NOAA's National Marine Fisheries Service is located here in Miami, and is involved with numerous activities pertaining to the Florida environment. The center's programs extend throughout the entire oceanic area surrounding Florida. Four laboratories and two research vessels assist the center in carrying out its mission, which is focused on assessing, monitoring, and predicting the distribution and abundance of living marine resources, gaging the effects of the environment on their survival and growth, plus examining the fishing effort in relation to various area

fisheries. For example, studies have been undertaken to investigate factors controlling the growth of marine fishes of the tropics, and to identify the effects of major oceanic currents on the dispersal of fish eggs and larvae. In addition, the environmental impact of ocean chemical deposits and offshore petroleum exploitation is being examined.

The center is also collecting information on various commercial and sport fishing resources in order to assure wise conservation and management and optimum utilization. Furthermore, we are anticipating increased interest by the southeastern coastal States in the development of a State/Federal plan for the management of the valuable south Atlantic shrimp resource, and we expect the center and the NMFS regional office in St. Petersburg to play a dynamic part in the development of that plan. Of course, these activities are in addition to the various NMFS programs, which, although national in scope, are frequently of direct benefit to Florida.

The NOAA research labs and the Southeast Fisheries Center have started the planning for an intensive study of the Florida nearshore area from Palm Beach south to Key Largo to be carried out cooperatively with the University of Miami's Rosenstiel School of Marine and Atmospheric Science, Nova University in Fort Lauderdale, and such other Federal and State agencies as want to become involved. The study would cover the currents, water mass properties and their variations, bottom sediments and their movements, commercial and sport fish and their relationships to the environment, and the atmospheric forcing functions on the system, particularly severe storms.

Then, with this type of understanding in hand, intelligent decisions on the use of the coastal zone can be made in relation to the location and possible effects of offshore dumping, sewer outfalls, offshore powerplants, channel dredging, and the various other uses which are or will be made of the offshore areas. The point here is that rational use of a resource must be based on understanding, and providing that understanding is part of NOAA's job.

This leads naturally into NOAA's role in coastal zone management as defined by Public Law 92–583, the Coastal Zone Management Act of 1972. Under the provisions of this act, the NOAA Coastal Zone Management Task Force has been working closely with the State of Florida through its Coastal Coordinating Council. Florida is expected to be one of the first States qualifying for Federal assistance under the Coastal Zone Management Act of 1972.

As the committee knows, the State/Federal coastal zone management program is based upon the great environmental interrelationship and interdependence of coastal lands and fresh waters and estuaries with the coastal estuarine and ocean environment which is well demonstrated in NOAA's activities here in Florida. NOAA has been developing guidelines and regulations for the grants-to-States program, generating working relationships with other Federal agencies active in the coastal zone such as the Departments of the Interior, HUD, EPA, and the Corps of Engineers, and has been taking inventory of the various State activities related to coastal zone management. Florida is well ahead of most States in its coastal zone activities. The NOAA National Ocean Survey is well along on a project to map the tidal shoreline boundaries of the State of Florida in conjunction with the Florida Department of Natural Resources.

The 92d Congress saw the passage of three other programs dealing with the environment in which NOAA will participate. By virtue of its authority under the Fish and Wildlife Coordination Act, NOAA will be commenting on permit applications under both the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuary (Ocean Dumping) Act.

In addition, under the latter act, NOAA is directed in title II to undertake a program of comprehensive research with respect to the effects of ocean pollution, overfishing, and man induced changes of ocean ecosystems. Under the Marine Mammal Protection Act of 1972, the Secretary of Commerce is charged with protecting certain marine mammals, such as porpoises, which are important to Florida.

NOAA's sea grant program is well represented at the University of Miami with a concentration of activities in areas of particular local relevance. These involve aquaculture, ocean law, corrosion studies, beach erosion studies, fisheries, pharmacology, estuarine studies, and the environmental problems of Biscayne Bay here in Miami. Sea grant has proven to be a valuable adjunct to the other ongoing NOAA programs, and we work closely with our colleagues at the University of Miami.

The coastal zone is where the sea and the land meet, but more importantly, it is where the sea and man meet, and therefrom develop the problems. We will continue to work jointly with other Federal and State agencies to develop the environmental understandings necessary not only to help solve today's problems, but to allow future decisions to be made that will result in fewer environmental problems tomorrow.

In the atmosphere over Florida, NOAA is also at work learning how this environment works and how it interacts with the sea beneath it. This summer, for example, NOAA plans a series of studies and experiments aimed at improving our ability to understand, predict, and even modify the weather. NOAA elements in Miami working with scientists from the University of Miami and the University of Virginia will study the physics of cumulus clouds during seeding operations and on nonseeding days. We want to know the quantitative cause and effect relationships involved in seeding cumulus clouds to increase cloud size and precipitation and those relationships involved in the energy distribution and the air-sea interactions in tropical storms.

We will use satellite observations, instrumented research aircraft from NOAA's research flight facility and from the naval research laboratory, radars, and a dense network of surface wind and rain measuring devices in the project area south of Lake Okeechobee. Seeding operations are scheduled to start July 1 and run through August. We hope for 20 experimental days during this period, of which seeding will take place during only 10.

In hurricane research there will be no field experimentation this year to study the feasibility of reducing the maximum winds in a hurricane, due to preparation for a move to the Pacific where a larger number of experiments will be obtained. Scientists from NOAA's National Hurricane Research Laboratory will work on the cloud physics project in July and August in an attempt to learn more of the distribution of water in cumulus clouds like those associated with a hurricane. If a hurricane becomes available, they will fly into it to obtain data on the natural variations within these great storms to enhance the data base

when the hurricane field experimentation—Stormfury—is moved to the Pacific in 1976.

This has been a brief overview of NOAA's involvement in the local environmental scene. Additional details will be found in the other material to be submitted to the subcommittee. I will be glad to answer any questions. Thank you.

Mr. FASCELL. Thank you very much, Dr. Stewart. Colonel Stipo?

STATEMENT OF COL. VITO D. STIPO, U.S. ARMY, OFFICE OF DIRECTOR OF FACILITIES MANAGEMENT, OFFICE OF THE SECRETARY OF DEFENSE; ACCOMPANIED BY KEITH LANG, STAFF CONSERVATIONIST, NATURAL RESOURCE MANAGEMENT, SOUTHERN DIVISION, NAVAL FACILITIES ENGINEERING COMMAND, CHARLESTON, S.C.; ROBERT C. YOUNG, CIVIL ENGINEER, PUBLIC WORKS DEPARTMENT, NAVAL STATION, KEY WEST, FLA.; WALTER W. WYATT, DEPUTY BASE CIVIL ENGINEER, HOMESTEAD AFB, FLA.

Colonel STIPO. I would like to express the Department's appreciation for your invitation to appear before your subcommittee on the responsibilities for carrying out natural resources conservation and pollution abatement programs, particularly our military programs in the State of Florida.

Addressing first our natural resources and conservation programs, it may be well to cover briefly some of its legislative history. Public Law 85–337, section 2671 of title 10, United States Code, required that hunting, fishing, and trapping on military installations would be in accord with the fish and game laws of the State in which it's located; that State fish and game licenses be required; and that access be provided to the installation to State officials to effect measures for the management, conservation, and harvesting of fish and game resources.

Later, Public Law 86–797, September 15, 1960, as amended by Public Law 90–465, August 8, 1968, authorized the Secretary of Defense to carry out a program of planning, development, maintenance, and coordination of wildlife, fish and game conservation, public recreation and rehabilitation in military reservations in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense, the Secretary of the Interior and the appropriate State agency designated by the State in which the reservation is located.

The comprehensive plans to be developed under this act were to be consistent with any overall land use and management plan for the lands involved and, where hunting, trapping, and fishing are permitted, such would be conducted in accordance with State laws and regulations.

Section 2 of Public Law 90–465 further authorized to be appropriated to the Secretary of Defense an amount not to exceed $500,000 per year for fiscal years 1970, 1971, and 1972 to carry out a program for the improvement of fish and wildlife programs and for the development and enhancement of recreational opportunities on military reservations.

The statute further provides that the Secretary of Defense shall, to the greatest extent practicable, enter into agreements to use the services, personnel, equipment and facilities of the Department of

Interior, with or without reimbursement, in carrying out the provisions of the act.

In implementation of these authorities, a basic agreement has been in effect since 1960 between the Department of Defense and the Department of the Interior covering conservation of fish and wildlife resources on military installations. In addition, a total of 237 cooperative agreements covering approximately 19 million acres of the 25.8 million acres of land controlled by the Department of Defense are in effect between the installation commanders and the designated State agencies.

Under these agreements, and within the funds generated by hunting and fishing fees supplemented by other resources of the Department, successful and well-balanced conservation programs have been developed at Defense installations capable of supporting such a program consistent with the military mission.

The fact of budgetary restraints limited the exercise of the appropriation authority provided in Public Law 90–465 with a resultant limitation on the technical and other assistance provided by the Department of the Interior. Consequently, the extension of an agressive fish, wildlife, and outdoor recreation program to all suitable installations has not been possible.

H.R.'s 75, 733, and 4327 have been introduced in the 93d Congress and would, in common, amend section 670 of title 16, United States Code to extend, through fiscal year 1977, the authorization contained in Public Law 90–465 for an annual appropriation to the Department of Defense for the purposes of the Act and would, at the same time, increase the authorization to $1.5 million per year.

In addition, H.R. 75 and 733 would essentially provide in a new title I an authorization to the Secretary of the Interior of an annual appropriation not to exceed $1 million for fiscal years 1974 through 1978 to enable the Secretary of the Interior to carry out such functions and responsibilities as he may have under the cooperative plans for the conservation of natural resources or the development of public outdoor recreation programs on Defense lands.

The Department of Defense believes that the current working arrangements with the Department of the Interior to be the most satisfactory method by which military lands can be managed under the multiple-use concept. While there is no formal agreement specifically addressing outdoor recreation, per se, we have cooperated with Interior in making available our lands for inclusion in recently enacted legislation for the Golden Gate National Recreation Area, the Gateway Recreation Areas in the States of New York and New Jersey, and more locally the Gulf Islands National Seashore.

At the local level, public use of our resources is being supported through directives from the Office of the Secretary.

Recognizing that only so much hunting and fishing pressures can be supported, we are encouraging more of the nonconsumptive public uses such as hiking or bike trails, nature watching, horseback riding, and picnicking. From a total of 4,500,000 visitors for such purposes in fiscal year 1971, this use increased dramatically to almost 7 million visitors in fiscal year 1972. We are also a member of the Secretary of the Interior's Federal Task Force for the development of a comprehensive outdoor recreational plan for submittal to the Congress this calendar year.

With more specific reference to the State of Florida, fish and wildlife conservation programs are being carried out at all military installations with land or water areas and habitat capable of supporting such a program. We consider our programs in this State to be outstanding and ranking at the top in our national standings.

Twice in 9 years, Tyndall Air Force Base has won first place in the Secretary of Defense's annual conservation award and is again the Air Force's nominee this year. Eglin Air Force Base also took first place in the competition in 1963, while the Navy's program at Cecil Field near Jacksonville, qualified it for runner-up consideration in the 1971 competition.

While there are no formal cooperative recreation plans pursuant to 10 U.S.C. 670 in existence at this time in the State of Florida, public use of our facilities within the framework of security and safety has been encouraged. Tyndall Air Force Base, again, is a splendid example. Formal plans have been drafted and are now being reviewed for Patrick, MacDill, Eglin, and Tyndall Air Force Bases and the Avon Park bombing and gunnery range.

Additionally, the Air Force has granted a lease to Polk County on the Avon Park range for use of land for a campground while two leases have been issued to the State of Florida on Eglin Air Force Base for the Fred Gannon State Park and Basin Bayou State Park. Similar programs are being initiated within the Department of the Navy.

Turning from natural resources to pollution abatement: In consonance with the national effort to improve the quality of the environment, the Department of Defense has been conducting a very active program to abate air and water pollution at military installations. Following a survey of Defense establishments, necessary corrective measures have been included in a phased funding plan which is updated annually. The magnitude of this program is indicated by the fact that over the period fiscal years 1968 through 1973 approximately $375 million has been funded for military construction projects to control pollution at Defense installations. Currently pending before Congress is a request for fiscal year 1974 funding in the amount of $116.5 million. The congressional support for this program has been excellent over the past years, and we would hope that our fiscal year 1974 request is favorably considered.

With respect to the State of Florida, over the period 1968–73, approximately $18 million has been funded for projects to support the air and water pollution control programs. These projects are either completed, under construction, or in the design phase. They involve construction and modification of sewage and industrial waste treatment plants, sewage collection systems, refuse disposal facilities, and air pollution control equipment.

As of the present, projects have been completed to bring approximately 8.3 million gallons per day of domestic and industrial waste discharges into compliance with applicable standards. Currently pending before Congress is a request for fiscal year 1974 in the amount of $5.7 million for additional pollution abatement projects in the State of Florida.

Of particular interest with respect to Air Force installations are projects at Eglin, Tyndall, and MacDill Air Force Bases for land application of secondary treated effluents. These projects will not

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only assure compliance with the zero discharge requirements that the State has established for the waters in these areas, but will also provide an effective recycle system for recharge of the ground water.

Funds for these projects in the amount of $3.3 million have been appropriated. At Homestead Air Force Base, which currently has secondary treatment for 2.4 million gallons per day of sanitary wastes, we plan to participate with Dade County in their areawide system.

With regard to the Navy program, a program of considerable importance is the handling of wastewater from vessels. In accordance with the Water Quality Improvement Act of 1972 and Environmental Protection Agency regulations, the Navy has undertaken a 5-year program for the collection of wastewaters aboard ships and discharge to shore facilities for treatment.

Work to modify the ships, the provision of companion sewerlines on piers along with the necessary onshore treatment facilities were initiated in fiscal year 1973. The naval station at Mayport, Fla., was one of the first installations to be funded for the provision of pier sewers at a cost of $2.7 million.

Another item of importance with regard to Florida waters is the 5-year Navy program initiated in fiscal year 1973 to reduce the "human error" factor in accidental oilspills. The program calls for simplification of oil piping, provision of more reliable equipment, and connections of overflow piping to slop oil tanks.

With regard to water pollution control, all our installations have filed the necessary permit requests with the Environmental Protection Agency in accordance with the requirements of the National Pollutant Discharge Elimination System established by Public Law 92–500.

In the air pollution control area, projects have been programed for vapor emission control for POL storage tanks, modifications at heating plants and upgrading of incinerators. Of special interest in this regard is a firefighting training facility for the Naval Station Mayport. This is one of several training stations which are required by the Navy to simulate fires in boiler rooms and other ship compartments. Unfortunately, these training operations produce dense plumes of smoke. The problem is to provide a realistic training situation while complying with abatement requirements. Accordingly, the Navy has undertaken development and evaluation of systems to provide the necessary training and still abate the pollution. Based on these studies, criteria are being developed for the use of an appropriate system for use at Naval Station Mayport.

At all our installations, we are working closely with the State of Florida to determine compliance with air pollution abatement schedules.

We believe that the program to abate pollution from Defense installations in the State of Florida has been proceeding in a satisfactory manner. Necessarily, additional projects will be required in future year programs to comply with the standards to be established under the recently passed pollution control legislation. The abatement of pollution has received high priority in the activities of the Department, and we would expect that, with the continued excellent congressional support, we should be in a position to meet the new standards when established.

In accordance with the committee's request, the attachments to our statement provide details concerning the status of air and water pollution control projects of Defense installations in Florida.

Mr. FASCELL. The attachments to your statement will be made part of the record.

[The information referred to is printed in app. 3, pp. 824–894 of these hearings.]

Colonel STIPO. I have with me today Mr. Keith Lang and Mr. James Carr from the Southern District Naval Facility Engineering Command in Charleston, Mr. Walter W. Wyatt, from the Homestead Air Force Base, and Mr. Robert Young from the Key West Naval Station.

We would be glad to answer any questions the committee might have in these areas, and we will provide for the record that information that is not readily available today.

Mr. FASCELL. Thank you very much, Colonel.

I would like to get some specifics from anybody who has them about how it is expected to tie in Homestead Air Force Base with the sewerage system we do not have; and on which there is considerable difference of opinion as to whether it is going to be deep well or outfall.

Colonel STIPO. Our sewage treatment plant at Homestead meets present requirements, but we will not be able to meet the requirements coming down the road. Our plan is to participate with Dade County in the regional sewerage system.

Mr. FASCELL. What part, if anything, did the EPA impact statement have to do with where Homestead Air Force Base fits in with the Dade County system?

Mr. WHITE. I do not recall specific details as to how it would fit in the system. As the Colonel said, if it does go into the system, our recommendation in the draft impact statement is for deep wells in south Dade. Presumably, that system could serve the Homestead Air Force Base and would serve it.

There is some controversy that has arisen in this area, as you know; and we are somewhat uncertain about how this will be approached in the final analysis. It will be the State's responsibility to certify that project and submit it to us in accordance with whatever policy they decide.

Mr. FASCELL. You mean after your impact statement is final?

Mr. WHITE. That is correct.

Mr. FASCELL. Is there a time limit by which the State must certify subsequent to the publication?

Mr. WHITE. No. This is involved in their entire process under the amendments of the Federal Water Pollution Control Act. It relates to the priority lists and submissions of their entire program—their 1 year so-called construction list.

Mr. FASCELL. When EPA issues its final impact statement on Dade County, is that statement a final act by EPA?

Mr. WHITE. Yes; it is.

Mr. FASCELL. All that follows thereafter is State and local compliance?

Mr. WHITE. That is correct. We make a final recommendation in the final impact statement, based on all the alternatives explored.

Mr. FASCELL. They live with it if they want any Federal funding?

Mr. WHITE. Yes, sir.

Mr. FASCELL. Colonel, as far as the military part of this thing is concerned, where you fit into the system and how you fit into the system is a matter of simple negotiation between the military base commander and the county—nothing to do with the Federal Government at all?

Colonel STIPO. The Department of Defense; yes, sir.

Mr. FASCELL. It just seems to me downright fantastic. It just happens at Homestead you have 2.4 million gallons a day, I think you said.

Colonel STIPO. That is what it is at present.

Mr. FASCELL. Which might not make a big difference. I do not know whether it would or not. I do not know, for example, whether your 2.4 is included or excluded in the 50 million gallons a day estimated for the deep well in south Dade, or whether it is projected upward or outward or sideways.

I am just curious; that is all. Then I got to thinking, if that is the way they are handling Homestead and Key West, what are they doing with the big installations like in South Carolina where you have wall-to-wall boats.

Colonel STIPO. In those places where we can participate with the regional authority, it is DOD policy to participate.

Mr. FASCELL. What I am struggling with, Mr. White—which is very obvious—is that it sounds to me that DOD has really nothing to do with what EPA says ought to be done as a matter of national policy.

Mr. WHITE. I do not believe that is quite the case here. Of course, an Executive order has been issued requiring Federal facilities to comply; in fact, the law requires that Federal facilities comply with the requirements of the 1972 amendments.

Now, the modus operandi of doing this is left open. We urge regionalization. And in this case, the Dade County plan would provide adequate capacity to serve the Federal facility.

Mr. FASCELL. That sounds logical and reasonable, except what I have heard tells me that none of that has happened yet.

Mr. WHITE. No, sir. It has not in fact happened. We are still in the developmental stages.

Mr. FASCELL. What has not happened is the finalization between the military installation and county of how they are going to be integrated into the plan; yet, EPA is about to issue the final statement. I am lost somewhere.

Mr. WHITE. In the conceptual stages of the development of the plan there would be a capacity to handle this. Now, the details of the negotiations between the Department of Defense and the county are a separate matter.

Mr. FASCELL. It is up to them.

Mr. WHITE. Yes.

Colonel STIPO. Homestead Air Force Base has been meeting with Dade County in planning to participate in the regional sewerage system.

Mr. FASCELL. When you made the statement in your presentation that you are going to tie in Homestead Air Force Base with the countywide outfall system, that is not really what is going to happen.

Colonel STIPO. We are going to participate with the regional——

Mr. FASCELL. If your statement appears like that in the record, you may want to amend it. I do not know. I am asking.

There are no outfalls in south Dade County. In your statement, you have that in; but when you were talking, you left it out. I did not know exactly what was going on. That is the reason I thought I would ask.

Mr. White, you said something about your having an expert with you; you had an expert with you who has been working on a plan with Dade County. What plan is that?

Mr. WHITE. I indicated that this individual has been assigned to this area—in Fort Lauderdale to be specific—and he headed up a study team that supported our enforcement conference activities and other field sampling activities that we conducted in this area during that time period, 1969–72.

Mr. FASCELL. He is in Fort Lauderdale? Was the study conducted in Fort Lauderdale?

Mr. WHITE. Yes. We had a barge until very recently in Fort Lauderdale—a floating laboratory.

Mr. FASCELL. What did the study cover—what were its purposes?

Mr. WHITE. The lower east coast of Florida, specifically with respect to ocean outfalls. They were asked to develop criteria for the use of ocean outfalls. It turned out that this team provided the information used in our disposal methods impact statements. Practically all of this material was developed by this team.

Mr. FASCELL. I am glad to hear that because I was going to ask—I have been burning to ask the question all day long—as to who developed the criteria for the decision on the deep well disposal in south Dade. Was it the same team?

Mr. WHITE. Not that particular team. That emanated from the regional office.

Mr. FASCELL. Was that a policy decision or a scientific decision?

Mr. WHITE. A scientific decision.

Mr. FASCELL. A scientific policy decision?

Mr. WHITE. That is correct.

Mr. FASCELL. It appears to me that you have a very thorough and long-ranging study for detailed criteria on outfalls as an interim disposal system. I do not see anything equal thereto, or anywhere near it—at least I have not heard about it—with respect to deep well disposal.

Is there such a study? Or are we just doing the best we can with what we have?

Mr. WHITE. What study information we have was incorporated in the disposal methods impact statement—all reference literature and all information is in that impact statement.

Mr. FASCELL. I understand that. What I am struggling with is: somebody had to make a decision somewhere at the regional level to write that concept into the impact statement; am I correct?

Mr. WHITE. Yes, sir.

Mr. FASCELL. In order to do that, they had to decide on the material, the study, the recommendation, the art, or the literature that was available upon which to predicate that conclusion. We do have your own statement and a large and thorough study over a long period of years on outfalls. I am just trying to measure in some way

what is available for the predicate—the basis on which the conclusion is ultimately placed or made for the deep well, and who made it.

Mr. WHITE. Let me say that that predicate is incorporated in the disposal methods impact statement. We have covered all alternatives—the ocean outfall, deep wells, advance waste treatment, and surface disposal spreading. Things of this nature are in the impact statement.

Mr. FASCELL. I understand all that. But if I am wrong, correct me. With the use of outfalls as an interim disposal system, you have a 3- or 4-year study actually conducted by EPA.

Mr. WHITE. Excuse me. Let me clarify something: In toto, that study was not directed toward the ocean outfall disposal method criteria. I believe at the second convening of the Dade County Enforcement Conference, of which we had three sessions, we saw the need for such a study in additon to their other activities.

The field team has been studying the inland waters, all the waters, the surface waters, of Dade County. The conferees directed them to study the ocean outfall situation; and it is not a long, detailed 3-year study. It is not that out of balance between the study and the thought that went into the deep well study.

Mr. FASCELL. I was not suggesting anything at all. I am just trying to get the record straight. What is the basis for the recommendation, final conclusions, or interim conclusions of the drafting board of April 19, which is subject to change depending on what the final word is in July. Just tell me what is the basis for the recommendation in one case for use of outfalls or interim disposal systems; in another case, for the deep wells. And I do not mean by that a policy decision. Just tell me which study, the scientist, the individual, or whoever it is that built the base upon which the recommendation was made.

If there is not any, OK; you made a policy decision. That might be fine.

Mr. WHITE. After I make a brief statement, I would like to call on Mr. Sever to give you some detail concerning the deep well situation.

Mr. FASCELL. Let me be clear before you make your point. I am sitting here with a large report. It says "EPA Impact Statement," and a thousand people all over the country have that hot report in hand; and it comes out of a regional office. I do not believe that a clerk wrote that report.

I am a good solid American, and I believe a scientist somewhere had some input in that report. Otherwise, EPA has no meaning or very little. All I am trying to find on the record, with respect to the published report that now exists, is: who are the people and what is the basis on which they made the recommendation. That is all I want. I am not arguing one way or another yet.

Mr. WHITE. Do you want to know who made the final decision?

Mr. FASCELL. Also, I would like to know who made the final decision.

Mr. WHITE. At the regional level, final policy decisions are made by the regional administration—in this case, Mr. Ravan. He did it based on a multitude of effort from our technical staff in the development of this document, which we feel is a predicate for our decision.

Let me clarify what our decision is. I do not think you quite understand what we have said in this disposal methods impact statement. In going through, we concluded that there are two almost equal viable

alternatives for disposal of treated waste effluent in this part of Florida. These two alternatives are ocean outfall and deep wells.

Again, we feel that the scientific predicate is included in this document. Other than that, I do not know how to respond to your question. We have numerous technical people——

Mr. FASCELL. I do not want to belabor of this thing, but I have not heard that from all the testimony I have heard today.

Mr. WHITE. Do you want to read in the principal authors of this impact statement—the people that participated in the development?

Mr. FASCELL. Is that part of the statement?

Mr. WHITE. Yes.

Mr. FASCELL. There is no point in reading that. Outfalls have been in existence and deep well disposals have not; so I suppose there is some scientific body of information available that somebody could evaluate.

Mr. WHITE. Mr. Sever can give you the rundown of the scientific information that is available in this area—that which we predicated part of our decision upon.

Mr. FASCELL. If he is the scientist who decided on what the administrator——

Mr. WHITE. He did not make the decision. He made findings of scientific facts, and the regional administrator made the decision.

Mr. FASCELL. That's fine. Now we are getting somewhere. Let's hear from him.

Mr. WHITE. Mr. Sever.

Mr. SEVER. Sir, my name is Charles Sever. I am a hydrologist with a background in geology, and I am on the staff of EPA in Atlanta.

Mr. FASCELL. Go ahead and help me out.

Mr. SEVER. As I have interpreted the sequence of events that led to this decision by EPA—and I hope Mr. White will correct me if I am wrong—I was not in on the early part of this.

Mr. FASCELL. You have confused me already. If you are interpreting the sequence of events, you tell me that you are not part of the sequence of events; now you tell me that you were not there when the decision was made.

Mr. SEVER. The sequence of events leading up to the present day started with an enforcement conference in which testimony was taken on deep wells by the Florida Department of Natural Resources. Dr. Vernon, who advocated deep wells as a means of disposal of secondary treated municipal waste under ground.

This was followed by other members presented in the testimony: Dr. Garcia, Mr. Callahan, of the U.S. Geological Survey out of Washington, who heads the Ground Water Branch; Mr. Conover, with the U.S. Geological Survey in Florida—all these gentlemen with backgrounds in geology and hydrology advocated that EPA consider deep well disposal as the means of disposing of secondary treated waste in South Dade County.

At this point——

Mr. FASCELL. This was a conference on the record?

Mr. SEVER. Testimony on the record.

Mr. FASCELL. It is one thing for me to have it privately, and another thing to have it publicly.

Mr. SEVER. These gentlemen convinced the Dade County enforcement conference panel that they should look into deep well disposal. The conferees recommended that Dade County and the U.S. Geologcial Survey—primarily the U.S. Geological Survey—monitor the existing deep wells in Dade County and report to the conferees at the end of 1 year.

The report from the U.S. Geological Survey to the conferees is in the third enforcement conference report. They state that, in the opinion of the U.S. Geological Survey, these wells are functioning properly and that there is no indication of contamination of any of the fresh water or saline aquifers.

The next tests by the Environmental Protection Agency——

Mr. FASCELL. May I interrupt you right there? Did some agency of Government sign off on that statement?

Mr. SEVER. Yes, sir.

Mr. FASCELL. What agency?

Mr. SEVER. U.S. Geological Survey within the Department of the Interior, out of the Miami office.

Mr. FASCELL. Is that conclusion backed up by the nature of the monitoring that was done over the period of 1 year?

Mr. SEVER. Yes, it is. Detailed chemical analyses were made on at least a monthly basis. There were four quarterly reports that came out, which we have in our files.

I am not sure that all the reports are in the third conference document, but they are in our files.

Mr. FASCELL. Anybody who wants to examine the background of this can go back to all this and satisfy themselves if they want to?

Mr. SEVER. That is correct. These references are quoted in our impact statement.

EPA, of course, continued during this time to oppose in principle deep well injection until such time as adequate knowledge was available to our staff on design and so forth, so that we could be assured——

Mr. FASCELL. You were just being sensibly cautious?

Mr. SEVER. That is correct.

The next step was to have our staff do a detailed research of the literature available, to contact those in the scientific community who were knowledgeable in this field, and to put together all these data, plus do a lot or resarch on our own, including contacting the oil companies which were very generous in some cases in supplying us with confidential data.

Mr. FASCELL. All of that is available, in addition to the monitoring reports?

Mr. SEVER. That is correct. The monitoring data continued to come to us. At the end of the first year when the U.S.G.S. submitted their report to us, EPA terminated is financial participation and made arrangements for the industry involved—General Waterworks Corp.—to send us their monitoring data monthly. Now these data began to feed directly to the staff of EPA at the regional office in Altanta.

We have been keeping track of these data since I started on this project. All these data have been put together, assimiliated, and evaluated by our staff, and are published in the impact statement in the chapter on deep-well disposal.

The conclusion was that deep wells are a viable alternate way of disposal.

Mr. FASCELL. Thank you, sir. That is very helpful, not only clearing my mind, but helping the record as to where we are up to this point.

Mr. SEVER. You made the remark just now that deep wells had not been in use in the area, where ocean outfalls had. They had been in use the last 14 years for disposal of municipal waste at Pompano Beach.

Mr. FASCELL. If we have any monitoring reports on that, do we know what the effect of that is to the aquifer of that fresh water system?

Mr. SEVER. It is my understanding that they injected sludge, as well as their waste, down for 14 years without any major problems developing. The reference to this is also in the EIS report.

Mr. FASCELL. That is the first time I have heard that. I think that is important to get on the record. I agree with you. It will be interesting hydrologically to find out what happens. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to begin by thanking each witness for very excellent statements, and the very thorough and complete way in which you have tried to respond to the inquiries of this committee, and also for your patience in a long afternoon.

I would like to ask you, Dr. Stewart, if NOAA is satisfied as to the adequacy of the studies that have been done in terms of the impact of ocean outfalls on the ocean resources?

Dr. STEWART. Even now, NOAA is in the process of preparing comments on the environmental impacts, as referred to by Mr. White. You are referring specifically to the offshore.

Mr. VANDER JAGT. Right.

Dr. STEWART. The official NOAA position will come, of course, when they comment officially on the impact statements. Unofficially, the scientists, of course, are never satisfied with any study.

I think in general we in NOAA feel that there is a lot more we must know about the environment. We are a little bit scared seeing the decisions that are being forced upon us and on which value judgments must be made with what many of us consider inadequate background information.

On the other hand, every effort seems to be being made by the organizations—the agencies concerned—to see that this information is available. We are trying to help ourselves.

Mr. VANDER JAGT. You are at least concerned that, given the state of the knowledge today, there is at a minimum a potential damage to ocean resources by ocean outfall. Would that be an accurate statement?

Dr. STEWART. I am trying to rationalize my own position with the NOAA position, which is always typical. For years, all of the organisms that lived in the sea have not only put their own waste into the sea, but their own bodies when they die end up in the sea.

There is a growing feeling, particularly among physical oceanographers and particularly in the Florida area, that the Gulf Stream would be a fine dispersal mechanism for municipal sewage if it were properly introduced; and I believe the "properly introduced" is a clue that has come out in some of the other testimony today.

It would be a question of assuring that effluent did get into the Gulf Stream where the diffusion and dispersion characteristics are incredible. In most instances this has not happened, and the material has not gone into the Gulf Stream.

Mr. VANDER JAGT. Where it has not gone into the sea far enough out to get into the Gulf Stream, there is a concern—a real concern—of potential danger.

Dr. STEWART. Quite so. One of the ancillary problems here is that we are using a very valuable resource in fresh water as a transporting agent to carry a relatively small amount of effluent out into the sea.

It is the loss of waste water, I think, that convinced most of us of the potential problem from disposing of treated sewage via ocean outfalls.

Mr. VANDER JAGT. When you say that there is this growing theory that it might be OK if it were discharged into the Gulf Stream, if it were properly introduced—"properly introduced" also includes secondary treatment before it is dumped into the Gulf Stream?

Dr. STEWART. Yes, indeed.

Mr. VANDER JAGT. If it could be established that secondary treatment plants, when they have an overflow or when they are not working properly—and a substantial portion of the time they are not functioning adequately—then there would be concern about resources in the Gulf Stream; would there not?

Dr. STEWART. I do not know. You have thought beyond my personal expertise, and certainly beyond the role of NOAA at this point.

Mr. VANDER JAGT. I do not mean to take you beyond your expertise, but it seems to me that if there is a grave concern about the damage that might be done to the Gulf Stream unless an effluent has secondary treatment, then assuming that the secondary treatment plant did not work part of the time, there would have to be a grave concern. I do not think that takes expertise. Would you agree?

Dr. STEWART. Yes.

Mr. VANDER JAGT. Do you have any knowledge in terms of the secondary treatment that would be provided for such a method? Would there be quite an accumulation of sludge?

Dr. STEWART. I have no idea, sir. I am not involved in the sewer business or the sewage treatment business.

Mr. VANDER JAGT. NOAA is concerned with the atmosphere, is it not—air quality?

Dr. STEWART. Yes, sir.

Mr. VANDER JAGT. If we have huge amounts of sludge to be disposed of and the technology most in use today is burning it, would that not at least raise your concern as to what the disposal of sludge using this method would do to the atmosphere?

Dr. STEWART. Sure. NOAA would really see its role here as providing the basic environmental information on, say, movements in the atmosphere—diffusion mechanisms in the atmosphere; so that those who have to decide whether or not material goes in the atmosphere will have information on where it is going to go, and what is going to happen, and at what points it is there. The same approach in the sea would be NOAA's role in relation to offshore outfalls.

Mr. VANDER JAGT. I understand.

Now, Mr. White, turning to the deep-well disposal method, as I understand it, as late as April 1971, this was EPA's policy as to deep-well disposal—and if I state it incorrectly, please correct me:

EPA's policy is to oppose subsurface disposal of waste in general because of the effects of underground pollution; and the fate of injection materials are uncertain with today's knowledge. This waste could well result in serious pollution damage and require a more complex and costly solution on a long term basis.

Does that fairly state the position of EPA as to deep well disposal as recently as April 1971?

Mr. WHITE. That deep well disposal policy has been revised as of February of this past year; but it is my recollection that that did, at that time, state the policy.

Mr. VANDER JAGT. Is the revision based entirely on the explanation that was just given us?

Mr. WHITE. I do not know that you could say it is based entirely on that explanation.

Mr. VANDER JAGT. What additional scientific studies?

Mr. WHITE. I think the policy has changed somewhat and has allowed us to consider this alternative in many situations. I would like to emphasize here that we feel that disposal in this situation of the secondary treated, chlorinated effluent offers practically no possibilities of a contamination of any subsurface fresh water or anything of that nature.

And I would hasten to point out——

Mr. VANDER JAGT. What about the ground water?

Mr. WHITE. The ground water that would be discharged, too, has a saline content of seawater.

Mr. VANDER JAGT. What if there are leaks in the well?

Mr. WHITE. If there are leaks in the well—let me explain the subsurface situation here very briefly. The fresh water supply that Dade County has in this section of Florida is in the so-called Biscayne acquifer, which is approximately 100 feet deep. We would be disposing of waste in the boulder zone where it does have the composition of sea water.

Now, we would monitor the fresh water to be sure that there is no feedback through the well, and we feel that the possibility of this is extremely remote.

Mr. VANDER JAGT. What about the bubble effect?

Mr. WHITE. The fresh water bubble effect—I am not sure I follow you.

Mr. VANDER JAGT. When the water goes down and creates a pressure.

Mr. WHITE. The pressure built up is very slight. I do not recall the exact poundage, but Mr. Sever might.

Mr. SEVER. The buildup to the fresh is 32 per square inch.

Mr. VANDER JAGT. You make this sound so logical and so completely acceptable. What was wrong with EPA in April 1971 when they said it is absolutely no good and has all of these terrible threats to the environment, and we therefore oppose it?

Were they just sort of misguided then?

Mr. WHITE. Are you possibly referring to the situation with the *Armco Steel* case in Houston?

Mr. VANDER JAGT. A general policy.

Mr. WHITE. Again, I think it is a matter of interpretation of policy. When you dispose of a highly treated waste effluent, this is different than disposing of an untreated effluent as was proposed in the Armco

situation; or possibly a partially treated waste effluent. This was an industrial waste effluent that this problem relates to and is substantially different.

If you want to get into specifics on Armco, I can have Mr. Sever check this out, and we can give you a detailed response.

Mr. VANDER JAGT. I do not want to take the other witnesses' time, or your time, or our committee's time, to go into one specific instance; but in connection with this deep well disposal that you are talking about here, then, you are talking about providing secondary treatment before you dispose of it into the deep well; is that correct?

Mr. WHITE. Yes. It is treated just as you would before you discharge it into surface streams.

Mr. VANDER JAGT. Then some of the same problems we talked about with Dr. Stewart would apply to this—the secondary treatment?

Mr. WHITE. Right.

Mr. VANDER JAGT. Just a couple more general questions on the impact statement. First of all, on page 312—and there is no way in this world you or anyone else can possibly know everything that is in this statement—but on page 312 here you are talking about a comment made on the impact statement by the Corps of Engineers, and the corps charges you with not really being responsive to the 1985 goal of zero discharge, or the 1983 goal of good quality for fish life and so forth.

And in the second paragraph on page 312 you point out that, well, let me ask you if this is what you are pointing out: In a sense, because that same act calls for the President to study these national goals for 2 years, until that study is completed, we kind of hold the 1983 and 1985 goals in abeyance.

Is that a correct reading of what you are saying in the impact statement?

Mr. WHITE. It reads that way. I do not think that we can exactly say that that is our position or policy on this. We, of course, feel that we are taking interim steps in developing this system which is compatible with achieving these goals—particularly the 1983 goals.

The no-discharge-of-pollutant goal is a matter of serious concern, and I think it will take real evaluation before that can in fact be hard policy.

Mr. VANDER JAGT. Would it be fair to say that that is sort of suggesting that we cannot take that 1985 goal of zero discharge too seriously right now?

Mr. WHITE. We are proceeding with the technology that we feel is a logical interim step in achieving that goal.

Mr. VANDER JAGT. So until that 2-year study is completed, we cannot pull out all the stops and go pell mell to that goal.

Mr. WHITE. That is right. The alternatives would be recycling and reuse to get rid of that discharge; and there are many ramifications or problems to this approach. And it is possible that much of this waste will not, in the near future, be usable to that degree.

There are other methods for conserving water.

Mr. VANDER JAGT. In the same impact statement, you considered the land disposal method, which does turn us in the direction of zero discharge very dramatically. Then, in talking about the land disposal method, you talk about some of the problems connected with it, and

you point out many reasons why you cannot consider land disposal. The third reason you give is that the FWPC amendments of 1972 recognize that in larger construction grants the projects must be funded by June of 1974, and that they would have to be completed by July of 1978. So you conclude that those 1972 amendments indicate recognition by Congress of the inherent difficulties of administrative, fiscal, and engineering design problems related to such land disposal programs. And you give that as a reason—as one of the many reasons—for laying that aside: the Congress itself is kind of, by the nature of the bill, saying "Do not take this land disposal method too seriously."

Is that a correct reading of page 308?

Mr. WHITE. I am going to ask Mr. Franzmathes to answer part of this. Maybe the wording there could have been put in a little better form or fashion.

I would say this: What we are saying is the technology that we would have to develop, the specific, special studies that we would have to undertake to be able to do that, would require substantial time. In addition, it would require considerably more or a higher degree of treatment. And this, too, would be curtailed in part by financial or economic considerations.

Mr. VANDER JAGT. You are saying these studies would take so much time that Congress, by the very time frame of the bill, sort of rules it out?

Are you also aware that a very specific amendment to the same legislation directed the Administrator of EPA to encourage the land disposal method everywhere in America?

Mr. WHITE. Let me say this, Congressman, with respect to that: The basic strategy that I see evolving and is incorporated in the act is that we have a paramount charge, and that is to pursue and abate pollution. By the very nature of the way that you have phrased certain requirements in the act—that is secondary treatment for domestic wastes, and the best practical controlled technology for industrial waste—you have put us in a time frame of achieving this from now until 1977. Inherent in the next step—the best available technology financially achievable—you have built in a second phase for us to move into.

I think that we will have to move in all areas to achieve these goals. We are aware of the specific requirement of Congress. We do feel that we will be moving in that direction. However, we feel it is of paramount importance to approach the problem of immediate pollution abatement, and we hope to be able to move in this direction and coordinate these activities as we go along.

Mr. FASCELL. Why are you considering this and moving in this direction? You ought to know that the amendment that the gentleman is talking about is known as the Vander Jagt amendment and that it was overwhelmingly adopted by the U.S. Congress.

Mr. WHITE. I knew I was being set up, Congressman, but I did not quite know how.

Mr. VANDER JAGT. Mr. White, after extensive debates, Congress knew exactly what it was doing.

Mr. FASCELL. I do not know about that. I believe I was justly persuaded by a very able advocate and Congressman.

Mr. VANDER JAGT. I am glad you were. Your being persuaded carries 60 to 70 votes with it.

I am gratified to hear that you feel that in the long haul and in view of the 1985 goal, you are moving in that direction.

Just one final comment, maybe, rather than a question. I do not normally make comments. I usually only question.

I would like to share with you something I am thinking about as I address it in my own mind—as to whether or not EPA carried out the law when Congress mandated EPA to encourage the land disposal method. As I read this environmental impact statement, I am trying to determine whether EPA encouraged or discouraged the land disposal method.

Here is just one tiny point, but it is illustrative to me of what runs through the whole impact statement. On page 230, you are talking about the land treatment method, and you point out that plants left on the effluent disposal site will in time decay.

Now, for land's sake, you leave plants on any land long enough and they are going to decay. That, to me, is what is running through the entire impact statement and its approach to the land disposal system.

Whereas, on the other hand, when you are talking in this impact statement about deep well discharge, there is never the consideration of the possibility that the well might leak. No, it will be designed so it will not leak.

I would like that same presumption applied to the land disposal system, where, if properly designed, these problems that are mentioned would not occur. Like we would not have the problem of plants decaying by leaving them in the soil too long, because we would harvest them in time.

And please feel free to respond.

Mr. WHITE. Let me make this statement: We prepared this disposal impact statement in a very short time frame.

Mr. VANDER JAGT. That is obvious.

Mr. WHITE. We, unfortunately, did not get out all of the bugs that we would have liked to, I will admit.

Mr. FASCELL. Or plants.

Mr. WHITE. Now, if you would like to get into some technical considerations of the basis for deciding not to proceed with land disposal at the time, I would like to make a statement.

Mr. VANDER JAGT. I would like to do it, but I do not want to take up everybody's time now, and I am sure that much better consideration went into it than plants not being harvested on time. And I think this is a very thorough work, and I would want to commend you for the direction you say that it is leading you eventually.

Mr. FASCELL. Mr. Gude.

Mr. GUDE. Let me say that it is certainly true that the gentlemen from Michigan was like a songbird when he presented his amendment. We were persuaded by his eloquence and his logic.

Mr. VANDER JAGT. May I interrupt long enough to thank the gentleman for adding logic.

Mr. GUDE. I was saying he was most eloquent that day. I remember it very well.

Mr. FASCELL. I never forgot that speech.

Mr. GUDE. I think the logic was that we in Congress wanted to be assured that EPA was not locked into just one or two systems, but

we wanted them to examine all alternatives. We feel that the land disposal system is a valuable alternative and deserving of careful consideration.

What I wanted to clarify, or ask you to clarify for me, is whether the deep well method was not just chosen as a last minute economy measure because there was a threat of impoundment of funds and you had to scurry around and find a cheaper alternative, and this is what you came up with.

Mr. WHITE. No, sir. It certainly was not that alone. However, economics do enter into some of the consideration, particularly when we consider two methods that are almost equal in their ultimate effectiveness as it relates to separating man from his waste.

There are many other factors that go into this. As Mr. Sever pointed out, we started considering this some time ago in the Dade County Enforcement Conference. We had explored the deep well possibility and recognized that as one of our better alternatives.

We would prefer to put the waste there, rather than to have a secondarily treated waste go into this canal system—a small canal that really cannot assimilate it, and where you have eutrophication problems that would likely abound and do abound in certain areas.

Mr. GUDE. In regard to the general policy that Mr. Vander Jagt quoted from—and I believe he stated it was set forth in 1971—it was a general statement applying to the entire continental United States.

Do you not have a particular situation here in Florida? Am I correct that it does not pertain generally to other areas of the country?

Mr. WHITE. The subsurface conditions here are very different from other sections of the country. We are not recommending such an approach anywhere else in the region except this area of Florida.

Mr. GUDE. Getting back to the point that you should consider all alternative methods. It just happens that the Florida geology may be suited to this deep well method. Is it really an indirect outfall in that it seems to connect with the Gulf Stream? Would you benefit from this draining through the aquifers in ways that you would not get through the direct outfall?

Mr. WHITE. That is correct.

Mr. GUDE. Is that right, Mr. Sever?

Mr. SEVER. Would you phrase that again?

Mr. GUDE. Is it the conclusion that this material goes into the Gulf Stream—that that is where this material ends up, whether it is a deep well system in Parkins Springs, Dade County, or some other Florida location?

Mr. SEVER. The areas that you have cited are not connected to the zone that we intend to inject the waste. The zone in which we intend to inject the waste is much older in age and much deeper in location.

The waste will displace the salt water that is in the zone now, and this zone is hydraulically connected—or we believe it is—with the ocean at one or two points. We are confident that it is connected on the east side of the Bahama Banks. There is a possibility that there is one point of connection, located 50 miles offshore in the Florida Straits.

We are confident that it will move in this direction. Based on the hydrology of all the aquifer systems in Florida, of which we have a great deal of knowledge, the injected waste will displace saltwater that is in the formation now for a long period of time; and the saltwater

being displaced will come out on the ocean's floor offshore. Its quality is so similar to seawater that we probably will not be able to detect it.

Eventually, with continued injection over a long period of time, the waste water being put underground would discharge offshore. If we assume that it is injected at the rate of 100 million gallons a day at this particular point, and expands equally in all directions—displacing the saltwater in the injected zone—we figure that the earliest it would show up offshore would be in excess of 1,000 years.

It is my personal opinion—and not that of EPA—that before 1,000 years from now comes along, Florida will have such a drastic water shortage that the water to be put underground in the form of waste water will be retrieveable and reusable by south Florida.

Mr. GUDE. So actually, you do not necessarily believe that this would go into the flow of the Gulf Stream? It would not be going into an outfall—an indirect outfall?

Mr. SEVER. It is my opinion that long before this reaches the ocean and discharges, we will be reusing it by pulling it back, and it will never discharge offshore.

Mr. GUDE. Mr. Chairman, with a period of 1,000 years from now, I yield back.

Mr. FASCELL. Mr. Ryan.

Mr. RYAN. I just have a few short questions. I would like to know how much research has been done by universities; over what period of time this research has been done; and how much of it is available? How much chance is there to be able to assess the validity of some of the assumptions that are made, such as the one you just made, sir?

From what we have been told here this afternoon, we are being asked as Members of Congress to take on faith the conclusions of those of you that have studied it very closely. You have a particular and very heavy stake in the decisions that you make.

Without any disrespect whatsoever, I tend to be a little reluctant to lean too heavily on such conclusions until they are corroborated by those who are more objective because they can afford to be, because they do not have any underground wells to which they can discharge this material.

I wonder what the availability of literature, or research papers, on the subject is?

Mr. SEVER. In doing the research for the ocean outfall-EIS, I turned to two publications for the U.S. Geological Survey in which they published references on deep well disposal. The first one published was almost 1 inch thick, and contained many thousand references to deep disposal wells in the United States alone.

Mr. RYAN. References?

Mr. SEVER. Wells that have been in operation for years. They had a second bibliography on references to where fresh water is being recharged underground. There are many thousands of these wells.

But let me come back to the project down here. Most of the technology for deep well disposal and deep well injection was developed in the oil industry. They injected water underground to pressurize the acquifer so they could develop this thing.

The drilling technology, the design, and the monitoring all have been in use for years. Since early 1940, they have been in use in

Collier County, south Florida. We have a history of their use, in which we have documented over a period of years that the aquicludes are functioning properly. None of these wastes that they have injected back in for disposal purposes have ever shown up in the fresh water acquifers.

Thus, we have history of the disposal wells in use.

Mr. RYAN. Are your conclusions on underwater hydraulic engineering, or whatever you choose to call it, based not only on pure research but on experience?

Mr. SEVER. That is correct. There have been some failures, and these have been researched to see why they failed; and we have learned from earlier mistakes.

Mr. RYAN. That is all I have.

Mr. FASCELL. I am trying to get a handle on 50 million gallons per day. I am trying to relate it to the amount of water in what is known as Biscayne Bay and the amount of daily flushing that takes place in Biscayne Bay on a millions-of-gallons-per-day basis. Does anybody have that?

Mr. WHITE. Congressman, we are going to have difficulty stating that for you right now. This was developed in our Biscayne Bay enforcement conference that was cut out by the action that was filed against Florida Power & Light.

Mr. FASCELL. I did not mean to bring them into it at all. I know they need water.

Mr. WHITE. I am not sure we could put it in a way in which you could envision the magnitude. We could maybe do it in acre-feet very quickly.

Mr. SEVER. If you were to put this in a pit, it would fill a pit 10 feet deep, a quarter mile wide, a quarter mile long, or a city block 1,000 feet long, 1,000 feet wide, 10 feet deep in 1 day.

So if you compare this with Biscayne Bay, you will see it is relatively insignificant as far as the volume of water in Biscayne Bay.

Mr. FASCELL. I am not ready to make that decision yet.

Mr. SEVER. Defining that as less than one-tenth of 1 percent.

Mr. FASCELL. You gave me a measuring stick. That was great, and I appreciate it. I can visualize it now.

[Subsequent correspondence with EPA concerning deep-well outfalls [follows:]

Fla. Land 339

NINETY-THIRD CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-C
WASHINGTON, D.C. 20515

August 9, 1973

Mr. Jack E. Ravan
Regional Administrator
Environmental Protection Agency Region IV
1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

Dear Mr. Ravan:

Enclosed for your information, review, and comment is a May 29 letter our Subcommittee received from Mr. Thomas J. Buchanan, Subdistrict Chief, Water Resources Division of the Geological Survey in Miami, Florida. His letter responded to our inquiries about what information is needed "to determine the effects of injecting large quantities of secondary treated waste water into deep wells" in Florida.

Mr. Buchanan indicates that a considerable amount of research is needed in this area and poses thirteen questions that "need to be answered." He also states that there is a need to drill "three deep observation-monitor wells...in conjunction with at least one planned deep injection well."

Also enclosed is a copy of a July 13 letter from the Florida Division of Health to the Florida Department of Pollution Control concerning the use of deep well injection in connection with the South Dade District regional waste treatment works. That letter refers to a paper by a GS hydrologist which similarly points out "that additional information is necessary as to the long term environmental impact of subsurface waste injection in Florida," and "comprehensive investigations properly designed are necessary if decisions as to the long term viability of this method of waste disposal in Florida are to be made."

I.

We would appreciate your advising us, by August 31, what steps you have already taken or plan to take (a) to resolve the issues discussed in the 13 questions in the GS letter to us, and (b) to carry out the GS recommendations concerning the construction and siting of the various wells, including the monitoring wells.

II.

The July 13 letter from the Florida Health agency also states:

> "In spite of our caution that the deep injection wells for this South Dade facility not be located so as to pass through the fresh water supply of Dade County, we are advised that the environmental impact statement soon to be issued by EPA will, in fact, specify that such wells be situated on the Treatment plant site contrary to our recommendations and those of the consulting engineers for the project."

(a) Is it true that EPA intends to "specify" that the wells be located at the treatment site?

(b) If the answer to (a) is yes, please state:

(i) whether the wells at this location will "pass through the fresh water supply."

(ii) why EPA has not followed the recommendations of the Florida Health agency and the consulting engineers?

(iii) the total project cost and the Federal share thereof if the wells are located (1) at the plant site and (2) at the site recommended by the Florida Health agency and its consulting engineers.

(c) Please send to us a copy of the environmental impact statement mentioned above. If it has not yet been completed, please send to us the current draft thereof, appropriately marked to indicate that it has not yet been completed.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Encls
Ltr, May 29, 1973, Geological Survey
Ltr, July 13, 1973, Fla. Division of Health

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION
901 SOUTH MIAMI AVENUE
MIAMI, FLORIDA 33130

IN REPLY REFER TO:

May 29, 1973

Congress of the United States
House of Representatives
Conservation and Natural Resources
Subcommittee
Rayburn House Office Building
Room B-349-C
Washington, D. C. 20515

Attn: Mr. Finnegan

Dear Mr. Finnegan:

This is in reply to our telephone conversation of May 24th in which you requested our thoughts on the information that is needed to determine the effects of injecting large quantities of secondary treated waste water into deep wells.

The use of deep wells for subsurface injection of liquid wastes is a safe, technically feasible method of waste disposal and pollution control in many areas of the country where geologic conditions are favorable. Southeastern Florida is unique in this respect. Here highly permeable saline-water-bearing carbonate strata with interbedded fine grained, less permeable strata lie beneath a thick sequence of relatively impermeable clays--conditions that appear favorable to the successful use of deep-well injection.

Deep-well injection has been used successfully in Florida by the oil industry for many years and has been recently introduced to the environmental engineering field as an alternative method for the disposal of treated waste water. Deep-well injection is not a disposal method, but rather a storage method, since wastes properly injected into the subsurface may remain there indefinitely. The method therefore might lend itself readily to the recovery of treated injected waste water in times of need as a supplement to the water supply.

At present there are two privately-owned deep-well injection systems in operation in Dade County, and plans for additional deep-well wells in Broward and Palm Beach Counties have been submitted to the Florida Department of Pollution Control for permits.

Research is needed to determine: the capacity of the deep aquifer to receive large amounts of injected waste water; waste water-formation water interactions; the recovery of injected waste water; and the ultimate fate of the injected waste water. Some pertinent questions that need to be answered are:

1. Will the construction and operation of injection wells pose a threat to shallow fresh-water supplies?
2. Is the aquifer capable of receiving large quantities of effluent and absorbing sustained hydraulic stress?
3. What is the degree of connection and possible interchange of injected effluent with the ocean?
4. What are the pre-injection and post-injection hydraulic gradients and circulation patterns?
5. What are the chemical interactions/compatibilities of the injected effluent with the rock matrix and native fluid?
6. What are the direction and rates of movement and dispersion of the effluent?
7. What are the subsurface lithologic and permeability distributions and their relationship to the hydraulic separation or isolation of the injected effluent from the overlying brackish and fresh-water aquifers?
8. What is the relative age of the native fluids in the receiving aquifer? Also, what are the salinity, temperature, pressure variations within the aquifer?
9. What quantity of injected effluent can be recovered for reuse?
10. What is the bacterial and viral content in the native water, the injected effluent, and in the recoverable effluent?
11. What is the dissolved gas content of the effluent, the native fluid, and the recovered fluid?
12. Will sustained hydraulic stress result in deformation of the rocks?
13. What site locations would best serve the water-management system?

Determination of the characteristics and behavior of the deep aquifer system and the hydrologic, geochemical, and biologic effects of large-scale injection of treated waste water into the aquifer system would necessitate the drilling and testing of a minimum of three deep observation-monitor wells, one to a depth of approximately 1700 feet in the upper Floridan aquifer and two to 3400 feet in the receiving aquifer, in conjunction with at least one planned deep injection well. All wells should be drilled with provision made for obtaining

hydrologic, geologic, and geochemical information during and after drilling. The monitor well in the upper Floridan would be so constructed to permit sampling water from both the deep and the shallow artesian water-bearing zones of the aquifer and would serve to monitor any possible upward leakage from the deeper injection zone. The other two observation-monitor wells would terminate in the injection zone and would provide a data base and serve to monitor the pressures, movement, and chemical interactions of the injected waste water within the zone. Shallow monitor wells should be drilled beside the deep wells to provide data on ground water quality before, during, and after construction of the deep wells.

In order to minimize the possibility of salt-water contamination to fresh water supplies during construction and testing, the site should be located near tide water.

Data obtained from construction and testing would serve as a data base for constructing other systems. Monitoring of deep well injection systems should continue for the lifetime of the system. Monitoring should include at least one deep well that taps the injection zone and one deep well that taps the first aquifer above the injection zone.

Sincerely,

Thomas J. Buchanan

Thomas J. Buchanan
Subdistrict Chief

cc: C. S. Conover, District Chief

DANTE B. FASCELL
13TH DISTRICT, FLORIDA

COMMITTEES:
FOREIGN AFFAIRS
CHAIRMAN: INTER-AMERICAN AFFAIRS SUBCOMMITTEE
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SPECIAL SUBCOMMITTEE FOR REVIEW OF FOREIGN AID PROGRAMS
GOVERNMENT OPERATIONS
MEMBER: LEGAL AND MONETARY AFFAIRS SUBCOMMITTEE
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

JOHN R. BUCKLEY
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 18, 1973

RECEIVED
JUL 25 1973
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

The Honorable Henry Reuss
Chairman
Subcommittee on Conservation and
Natural Resources
B349B Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed, for your information and consideration, is a copy of a letter I have received from the Chief of the Bureau of Sanitary Engineering of the Florida Division of Health to Peter Baljet, Executive Director of the Florida Department of Pollution Control.

I believe the points raised in the letter should be included with the material discussed during our hearings in Miami.

Sincerely,

Dante Fascell

DANTE B. FASCELL
Member of Congress

DBF:BB
Enclosure

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES . . . . . STATE OF FLORIDA
Emmett S. Roberts, Secretary — Reubin O'D Askew, Governor
hrs DIVISION OF HEALTH
POST OFFICE BOX 210 • JACKSONVILLE, FLORIDA 32201 • PHONE (904) 354-3981
Wilson T. Sowder, M.D., M.P.H., Director

July 13, 1973

RECEIVED
JUL 18 1973
DANTE B. FASCELL

Mr. Peter P. Baljet
Executive Director
Department of Pollution Control
2562 Executive Center Circle, East
Montgomery Building
Tallahassee, Florida 32301

Dear Mr. Baljet:

In the great federal and state thrust to protect the environment, sight must not be lost of protection needed for sources of public water supply. A specific concern of this agency is that nothing be done which may, through inadvertence or equipment failure, jeopardize the Biscayne Aquifer which serves as the fresh water source for all of Dade County.

In connection with the proposed South Dade District regional waste water treatment plant, and specifically with respect to disposal of the treated effluent therefrom, we have urged that if disposal is to be via deep injection wells, such wells be located easterly of the 1000 miligram per liter isochlor. We recognize that protection of Biscayne Bay is important and that effluent disposal to the Bay is undesirable. We recognize also that disposal to the straits of Florida or the Gulf Stream involves considerable distance. We, therefore, have not objected to the proposal that effluent be discharged to the "Boulder Zone."

In spite of our caution that the deep injection wells for this South Dade facility not be located so as to pass through the fresh water supply of Dade County, we are advised that the environmental impact statement soon to be issued by EPA will, in fact, specify that such wells be situated on the treatment plant site contrary to our recommendations and those of the consulting engineers for the project.

We are advised that compliance with recommendations for locating the injection wells in the area where failure would not endanger the fresh water supply would cost approximately $3 million more than if the wells are located at the plant site. It appears, from information available to us, that the cost reduction has played a major role in determination by EPA that the wells be located other than as recommended by both the consultants and ourselves. It seems to me that failure of one or more of the disposal wells could readily have an adverse effect far greater than a $3 million saving to construct a pipeline approximately two miles to a point easterly of the "salt line."

In this specific instance the Miami-Dade Water and Sewer Authority will be the agency charged both with providing water supply and with disposing of collected waste

waters. They have expressed their strong opposition to locating the disposal wells at the plant site, but we are advised that thus far the Atlanta regional office has not acquiesced, and they continue their proposal for improper location of the deep injection wells.

It is necessary further to call attention to the fact that in addition to water supply made available to the public, through publicly or investor-owned utility systems, many individuals in the South Dade area provide their own water supply through wells drilled into the Biscayne Aquifer. These individuals require protection as to their water supply equally with the protection being provided to the environment and their water may be in danger should injection wells west of the salt line fail.

A recent issue of Proceedings of the American Society of Civil Engineers carries in it a paper discussing subsurface waste water injection in Florida written by Mr. M. I. Kaufman, Hydrologist with the U. S. Geological Survey in Tallahassee. The publication of this paper was authorized by the U.S.G.S., and I conclude therefrom that it is endorsed by that agency. The conclusions drawn by the U.S.G.S. as late as August 1972 are that additional information is necessary as to the long term environmental impact of subsurface waste injection in Florida. It is pointed out that comprehensive investigations properly designed are necessary if decisions as to the long term viability of this method of waste disposal in Florida are to be made. In the light of such information from the federal agency having the greatest expertise with respect to underground waters, it is inconceivable to me that any other agency should assume a posture such as suggested earlier on the part of EPA. I must point out that my information is not from EPA and that I have not seen the final environmental impact statement, but nevertheless I believe it important I express to you and through you to EPA our concern that actions to protect the environment not jeopardise the water supply resources of this state.

Very truly yours,

S. A. Berkowitz, Chief
Bureau of Sanitary Engineering

SAB:ja
cc: Congressman Paul Rogers
cc: Congressman William Lehman
cc: Congressman Dante B. Fascell
cc: Congressman L. A. Bafalis
cc: Mr. Garrett Sloan
cc: Mr. Robert L. Quick
cc: Mr. Jack Ravan

[NOTE.—The "Final Environmental Impact Statement—South Dade County, Fla. (C120377)," prepared by EPA's Region IV, Atlanta, Ga., and dated August 23, 1973, which was transmitted with the following letter, is in the subcommittee files.]

U.S. ENVIRONMENTAL PROTECTION AGENCY—REGION IV,
Atlanta, Ga., October 5, 1973.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE REUSS: In Part I of your letter of August 9, 1973, you requested that I advise you what steps the Environmental Protection Agency has already taken or plans to take (a) to resolve issues discussed in 13 questions from Mr. Buchanan's (USGS, Miami) letter to you of May 29, 1973, and (b) to carry out the GS recommendations concerning construction and siting of the various wells including the monitoring wells.

The EPA Region IV has enjoyed a close working relationship with Mr. Buchanan and other USGS personnel on regional and local levels. All of the issues discussed in Mr. Buchanan's letter including his list of research needed and his recommendations concerning the construction, monitoring and siting of the various wells have been discussed in detail with Mr. Buchanan and his superiors. Brief answers to each of Mr. Buchanan's 13 questions are given below.

Question 1. Will the construction and operation of injection wells pose a threat to shallow fresh water supplies?

Answer. Deep well injection in South Florida will not pose a threat to the shallow fresh water supplies. This has been emphasized repeatedly by the EPA [1], USGS [2 3], Florida Geological Survey [4], consulting engineering firms [5 6], and others.

Question 2. Is the aquifer capable of receiving large quantities of effluent and absorbing sustained hydraulic stress?

Answer. Based upon data obtained from the testing and operation of existing disposal wells, our Hydrologist has calcuated that the cavernous zone developed at the base of the Eocene strata beneath South Florida is capable of receiving and transmitting 65 million gallons per day (MGD) or more away from a single well without exceeding the ability of the rocks to absorb the hydraulic stress. However, the EPA plans to impose a 100 to 300 percent safety factor and not allow more than 30 MGD to be injected through a single well during peak flow periods and not allow more than about 22 MGD to be injected during average flow periods. The effects of sustained hydraulic stresses on the aquifer during operation are to be monitored at each site.

Question 3. What is the degree of connection and possible interchange of injected effluent with the Ocean?

Answer. The EPA, USGS, Florida Geological Survey, and most consulting engineers agree that the saline aquifers of the boulder zone are hydraulically connected with the Atlantic Ocean and that wastewaters injected into this system beneath Dade County will eventually discharge into the ocean east of Miami Beach about 40 miles offshore.

Question 4. What are the pre-injection and post-injection hydraulic gradients and circulation patterns?

Answer. Data that will be collected during pre-injection testing and post-injection monitoring will be used to determine the hydraulic gradients and circulation patterns within the boulder zone near each injection well site.

Question 5. What are the chemical interactions/compatibilities of the injected effluent with the rock matrix and native fluid?

Answer. Black, Crow and Eidsness [7] compared the physical and chemical quality of effluent from a secondary treatment plant with the native fluid and

[1] EPA, 1973, Ocean Outfall and Other Methods of Treated Wastewater Disposal in Southeast Florida.
[2] In EPA, 1971, Second Dade County Enforcement Conference.
[3] McKenzie, 1971, USGS Data Report.
[4] Vernon, 1970, The Beneficial Use of Zones of High Transmissivities in the Florida Subsurface for Waste Storage and Waste Disposal, Florida Geological Survey. Inf. Cir. 70.
[5] Black, Crow and Eidsness, Inc., Gainesville, Fla., in EPA, 1970, First Dade County Enforcement Conference.
[6] Greeley and Hanson, Sanitary Engineers and Connell Associates, Inc., 1973, Water Quality Management Plan for Metropolitan Dade County.
[7] Black, Crow and Eidsness, Inc., 1970, Engineering Report on Drilling and Testing of Deep Disposal Wells for Peninsula Utilities Corporation, Coral Gables, Florida.

found no constituent which may significantly reduce the hydraulic and/or structural characteristics of either the receiving aquifer or the overlying confining layer. When fresh water is injected into a saline water aquifer, the waters probably do not mix. Instead, the fresh water is believed to displace the saline water and form a layer or bubble of fresh water which can probably be recovered for reuse.

Question 6. What are the direction and rates of movement and dispersion of the effluent?

Answer. The exact direction and rate of movement and dispersion of effluent will vary from site to site and will be determined at each site from data collected during pre-injection tests. However, data are adequate to show that the general direction of flow across Palm Beach and Dade Counties will be toward the southeast. The rate of movement of the waste front away from the disposal well will be about 3,000 feet per year initially, but will decrease with time. EPA, using a method outlined on pages 151 and 152 of its Final EIS on South Dade County, estimated the time of travel from well field to discharge point in the Atlantic Ocean, a distance of 40 miles, at 1,500 years. Data obtained during long-term monitoring will be used to refine this calculation.

Question 7. What are the subsurface lithologic and permeability distributions and their relationship to the hydraulic separation or isolation of the injected effluent from the overlying brackish and freshwater aquifers?

Answer. The regional distributions of subsurface lithologies have been mapped in detail by the USGS, the Florida Geological Survey and several oil companies. Reports published on this subject are far too numerous to itemize here. Lists of the most recent publications can be obtained from bibliographies contained in the articles referenced in the footnotes, of which copies are attached.

Five major aquifers have been recognized by the EPA [1] and USGS [8] within the boulder zone. Each zone is hydraulically separated or isolated from adjacent zones as evidenced by differences in water quality and hydraulic pressure between adjacent zones. Area distribution of each aquifer has been mapped by the Florida and U.S. Geological Survey.[8]

A clay aquiclude almost 700 feet thick overlines these five aquifers and separates them from the overlying Biscayne Aquifer. The possibility of contaminating the Biscayne Aquifer from operation of a properly constructed, operated, and monitored disposal well is extremely remote. The USGS [2 3], the Florida Geological Survey [4] and the consulting engineers [5 6 7] concur with EPA on this position.

Question 8. What is the relative age of the native fluids in the receiving aquifer? Also, what are the salinity, temperature and pressure variations with the aquifer?

Answer: Relative ages of fluids in the aquifers increase with depth. Tests attempted thus far to determine exact age of the water have proven unreliable except for water in the Biscayne Aquifer. Water in the Biscayne Aquifer generally is less than 100 years old. Testing of water from the aquifers for age will continue.

Salinity of the water increases with depth. Salinity in the Biscayne Aquifer generally is less than 30 mg/1 inland, but increases eastward and approaches seawater near the ocean. At a depth of 500 feet, water salinity is about 600 mg/1; at 1200 feet, it is about 1500 mg/1; at 1500 feet, it is 2500 mg/1; at 2000 feet, it is about 18,000 mg/1; and at 3500 feet of depth, it is about 20,000 mg/1.

Temperature of water beneath South Florida decreases with depth as a result of hydraulic interconnection between the aquifers and the Atlantic Ocean. At 100 feet, water temperature is 76° F; at 500 feet, it is 75°F; at 1000 feet, it is 74° F; at 1500 feet, it is 72° F; at 2000 feet, it is 71° F; at 2500 feet, it is 68° F, and at 3000 feet, it is 61° F.

Some pressure data is available. For example, the hydrostatic formation pressure in the base of the Biscayne Aquifer at a depth of 200 feet is about 90 psi. In the Floridan Aquifer at a depth of 1500 feet, it is about 650 psi and in the boulder zone, at 3000 feet, is is about 1150 psi.

Additional data on salinity, temperature, and pressure variations will be collected during drilling of each disposal well.

Question 9. What quantity of injected effluent can be recovered for reuse?

Answer. Based upon other areas where recovery and reuse are practiced, as much as 90 percent of the injected effluent could be recovered.[9] However, a more

[8] Puri, Faulkner, and Winston, 1973, Hydrogeology of Liquid Waste Storage in Florida.
[9] Brown and Silvey, 1973, Underground Storage and Retrieval of Fresh Water from Brackish-water Aquifer, in Underground Management and Artificial Recharge AAPG-USGS Symposium.

realistic estimate of probable recovery in South Florida is about 60 to 80 percent. Fluid density differences, rate of injection, size and shape of caverns, injection time, number of recovery cycles, rate of recovery and other factors affect the quantity recoverable. Thus, the quantity that can be recovered will vary between different sites, different aquifers, and with time at each site.

Question 10. What is the bacterial and viral content in the native water, the injected effluent, and in the recoverable effluent?

Answer. Based upon research data in other areas, the native water should contain a suite of faculative and anaerobic bacteria of the Genera *Agrobacterium, Pseudomanas, Bacillus, Arthobacter, Aerobacter, Corynebacter, Staphylococcus* and others. Population density should be relatively constant at 1,000 to 10,000/ml.

Once waste injection starts, the population densities of these Genera should increase due to bacterial growth, however, the injected liquid will not exceed a geometric mean of 2/ml fecal coliform. Anaerobic conditions will prevail and all aerobic bacteria injected in the wastewater will die off.

Recovered wastewater probably will need additional treatment such as aeration, filtration, chlorination, and possibly others, depending on its intended use to make it acceptable for reuse.

Question 11. What is the dissolved gas content of the effluent, the native fluids, and the recovered fluid?

Answer. The principal gas in the effiuent is oxygen in concentrations less than 10 mg/l. In the native fluid, the principal gas is hydrogen sulfide. Exact concentrations are unknown, but the amount is relatively small—probably less than 10 mg/l. Methane, carbon dioxide and nitrogen will be generated by anaerobic decomposition of the wastewater. However, aeration of the recovered fluid will purge it of these gases.

Question 12. Will sustained hydraulic stress result in deformation of the rocks?

Answer. These rocks have been under natural sustained hydraulic stress for millions of years with no known deformation. The minor (less than 5%) changes in hydraulic pressures that will be caused by injection should be much less than the changes that must have occurred during recent ice ages due to large fluctuations in ocean and ground water levels.

Question 13. What site locations would best serve the water management system?

Answer. Site locations that will best serve a water management system will vary with the intended purpose of each wastewater disposal system. Wastewaters to be used for engineering purposes such as salt water encroachment control, secondary oil recovery and retarding land subsidence must be located at precise depths and geographic points. Wastewaters for ground water recharge should be in recharge areas away from supply wells. Wastewaters for disposal purposes should be injected at or as close to the treatment plant as possible to reduce transmission costs.

Additional data on these subjects are included in EPA's six Environmental Impact Statements about wastewater treatment and disposal methods in Southeast Florida. Copies of each EIS have been previously furnished to your office.

The EPA and the Florida Department of Pollution Control (FDPC) are insisting that all applicants permit the USGS to acquire any additional data they need during construction and testing of each disposal well system before the system can be used for waste injection. As a result, the USGS is acquiring data on the regional and local hydro-geology and is entering into long term cooperative agreements with both municipalities and the Florida Geological Survey to monitor injection well systems.

The EPA considers the monitoring and data requirements recommended by Mr. Buchanan as inadequate and imposes much more stringent requirements. A copy of EPA's data requirements is enclosed.

In Part II of your letter of August 9, 1973, you asked:

(*a*) Is it true that EPA intends to "specify" that the wells (in South Dade County) be located at the treatment site?

(*b*) If the answer to (*a*) is yes, please state:

(i) whether the wells at this location will "pass through the fresh water supply."

(ii) why EPA has not followed the recommendations of the Florida Health agency and the consulting engineers?

(iii) the total project cost and the Federal share thereof if the wells are located (1) at the plant site and (2) at the site recommended by the Florida Health agency and its consulting engineers.

(c) Please send us a copy of the South Dade EIS.

The answer to (a) is contained on page 87 of the South Dade County, Florida EIS (EPA, 1973) which states:

"EPA policy will be to ensure that engineering and geological safeguards adequate to protect the integrity of the subsurface environment are adhered to in the preliminary investigation, design, construction, testing, operation, monitoring, and abandonment phases of injection wells drilled at or near the (South Dade) plant site. However, the Interim Water Quality Management Plan (Dade County, 1972) proposed that the wells be located several miles east of the plant site at an additional cost of $2,850,000. EPA feels that there is conclusive technical evidence to demonstrate that injection wells can be constructed and tested at the proposed plant site without interfering with present or potential use of water resources in the Biscayne Aquifer nor result in other environmental or health hazards. However, EPA will not object to Dade County locating the injection wells east of the plant site at their expense."

(b) EPA has not specified where these wells must be 'drilled.' However, I wish to address the questions asked in (b) (ii) above.

(i) Yes, disposal wells drilled at South Dade's plant site will pass through the fresh water zone just as similar disposal wells to be drilled elsewhere in South Florida, with the approval of the Florida Health Agency, will also pass through fresh water zones.

(ii) The EPA recognizes that during testing of the disposal wells previously drilled in Dade County, large quantities of saltwater were pumped from each well onto the nearby land surface and that this saltwater seeped into the ground and locally contaminated the Biscayne Aquifer. Some of this water eventually reached Miami's water supply. However, according to Mr. Buchanan (personal communication), a throrough investigation made by the United States Geological Survey in Miami, Florida, disclosed no evidence of failure or leakage of the injection wells.

The EPA has recommended that future wells be tested by a different method which will eliminate the need to dispose of large volumes of saltwater. This change, together with additional safeguards being imposed by EPA and the Florida Department of Pollution Control, will enable injection wells to be constructed in South Florida west of the 1000 ppm isochlore line without contaminating the drinking water resources in the Biscayne Aquifer or otherwise creating a hazard to the environment. This viewpoint is shared by the Florida Department of Natural Resources and the U.S. Geological Survey, and Dade County's consulting engineers, Black, Crow and Eidsness, Inc. However, because of the bad publicity received as a result of the previous contamination of water in the Biscayne Aquifer, Black, Crow and Eidsness, Inc. would prefer to see the South Dade Wells located in an area where water in the Biscayne Aquifer is already saline.

(iii) Project costs are shown on page 8 of the South Dade EIS. Briefly, summarized, they are:

Well location	Total cost	Federal share
East of plantsite	$50,300,800	$37,725,600
At plantsite	47,450,800	35,588,100
Difference	2,850,000	2,137,500

(c) A copy of the Final EIS on South Dade County, Florida has been enclosed as requested. It was filed with CEQ on September 10, 1973. The 30 day review period will end on October 9, 1973.

I appreciate your continued interest in the Environmental projects of Region IV.

Sincerely yours,

JACK E. RAVAN,
Regional Administrator.

Enclosures.

Recommended Data Requirements for Environmental Evaluation of Subsurface Emplacement of Fluids by Well Injection

The Administrator's Decision Statement No. 5 on subsurface emplacement of fluids by well injection has been prepared to establish the Agency's position on the use of this disposal and storage technique. To aid in implementation of the policy a recommended data base for environmental evaluation has been developed.

The following parameters describe the information which should be provided by the injector and are designed to provide regulatory agencies sufficient information to evaluate the environmental acceptability of any proposed well injection.

(*a*) An accurate plat showing location and surface elevation of proposed injection well site, surface features, property boundaries, and surface and mineral ownership at an approved scale.

(*b*) Maps indicating location of water wells and all other wells, mines or artificial penetrations, including but not limited to oil and gas wells and exploratory or test wells, showing depths, elevations and the deepest formation penetrated within twice the calculated zone of influence of the proposed project. Plugging and abandonment records for all oil and gas tests, and water wells should accompany the map.

(*c*) Maps indicating vertical and lateral limits of potable water supplies which would include both short- and long-term variations in surface water supplies and subsurface aquifers containing water with less than 10,000 mg/l total dissolved solids. Available amounts and present and potential uses of these waters, as well as projections of public water supply requirements must be considered.

(*d*) Descriptions of mineral resources present or believed to be present in area of project and the effect of this project on present or potential mineral resources in the area.

(*e*) Maps and cross sections at approved scales illustrating detailed geologic structure and a stratigraphic section (including formations, lithology, and physical characteristics) for the local area, and generalized maps and cross sections illustrating the regional geologic setting of the project.

(*f*) Description of chemical, physical, and biological properties and characteristics of the fluids to be injected.

(*g*) Potentiometric maps at approved scales and isopleth intervals of the proposed injection horizon and of those aquifers immediately above and below the injection horizon, with copies of all drill-stem test charts, extrapolations, and data used in compiling such maps.

(*h*) Description of the location and nature of present or potentially useable minerals from the zone of influence.

(*i*) Volume, rate, and injection pressure of the fluid.

(*j*) The following geological and physical characteristics of the injection interval and the overlying and underlying impermeable barriers should be determined and submitted:

(1) Thickness;
(2) areal extent;
(3) lithology;
(4) grain mineralogy;
(5) type and mineralogy of matrix;
(6) clay content;
(7) clay mineralogy;
(8) effective porosity (including an explanation of how determined);
(9) permeability including an explanation of how determined);
(10) coefficient of aquifer storage;
(11) amount and extent of natural fracturing;
(12) location, extent, and effects of known or suspected faulting indicating whether faults are sealed, or fractured avenues for fluid movement.
(13) extent and effects of natural solution channels;
(14) degree of fluid saturation;
(15) formation fluid chemistry (including local and regional variations);
(16) temperature of formation (including an explanation of how determined);
(17) formation and fluid pressure (including original and modifications resulting from fluid withdrawal or injection);
(18) fracturing gradients;
(19) diffusion and dispersion characteristics of the waste and the formation fluid including effect of gravity segregation;

(20) compatibility of injected waste with the physical, chemical and biological characteristics of the reservoir; and

(21) injectivity profiles.

(*k*) The following engineering data should be supplied:

(1) Diameter of hole and total depth of well;

(2) type, size, weight, and strength, of all surface, intermediate, and injection casing strings;

(3) specifications and proposed installation of tubing and packers;

(4) proposed cementing procedures and type of cement;

(5) proposed coring program;

(6) proposed formation testing program;

(7) proposed logging program;

(8) proposed artificial fracturing or stimulation program;

(9) proposed injection procedure;

(10) plans of the surface and subsurface construction details of the system including engineering drawings and specifications of the system (including but not limited to pumps, well head construction, and casing depth);

(11) plans for monitoring including a multi-point fluid pressure monitoring system constructed to monitor pressures above as well as within the injection zones; and description of annular fluid;

(12) expected changes in pressure, rate of native fluid displacement by injected fluid, directions of dispersion and zone affected by the project;

(13) contingency plans to cope with all shut-ins or well failures in a manner that will obviate any environmental degradation.

(*l*) Preparation of a report thoroughly investigating the effects of the proposed subsurface injection well should be a prerequisite for evaluation of a project. Such a statement should include a thorough assessment of: 1) the alternative disposal schemes in terms of maximum environmental protection; 2) projection of fluid pressure response with time both in the injection zones and overlying formations, with particular attention to aquifers which may be used for fresh water supplies in the future; and 3) problems associated with possible chemical interactions between injected wastes, formation fluids, and mineralogical constituents.

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Mr. FASCELL. We will take a short break.

[A brief recess was taken.]

Mr. FINNEGAN. Mr. White, were you here earlier this afternoon when there were some discussions with the corps concerning section 401 of the water pollution amendments and certification by the State of Florida?

Mr. WHITE. Yes.

Mr. FINNEGAN. The corps seems to take the position that the section 401 certification requirement does not apply to some of the permits.

Have you—has EPA—informed the State of Florida that that is the case?

Mr. WHITE. We have not informed them of our interpretation of section 401. We have debated whether or not regulations would be promulgated under this section. I believe I am correct in saying that the decision is that we will not. However, a definitive explanation is being developed, it is my understanding, at the Washington level, giving guidance on this particular aspect.

Mr. FINNEGAN. Since this was such an important item on so many permit applications that we were talking about today, we would appreciate it if you would look this matter over and, one, inform the State, and two, inform us, as quickly as possible, as to what your interpretations are of the certification.

I think the State has a vital interest in it——

Mr. WHITE. Agreed.

We, of course, will go through the proper channels. I think that you can understand this has to be developed nationally because it applies——

Mr. FINNEGAN. Section 401 has been on the books for some time now, and I think something has to be done.

Mr. WHITE. Agreed.

Mr. FINNEGAN. In our discussions with the U.S. attorney, we talked about the Justice Department's guidelines in regard to the Refuse Act. In those instances where a permit is actually granted—either by EPA or by the States through the NPDES program—the guidelines of the Justice Department provide that if the violation occurs on the permit conditions, the Justice Department, through the U.S. attorney, could file suit only under the 1972 statute. It specifically says not under the Refuse Act.

Is that an EPA policy?

Would you agree with me that the Refuse Act is still a viable piece of legislation that can be used against persons who violate the permit condition?

Mr. WHITE. It is a viable peice of legislation that in my opinion could not be used against point sources or discharges that are permitted under the 1972 amendments.

Mr. FINNEGAN. Is that an EPA policy or is that an interpretation of the statute?

Mr. WHITE. That is my interpretation of the statute. Let me back up.

Mr. FINNEGAN. You have counsel here. Could I ask him?

Mr. WHITE. I am an attorney. I was former Director of the Enforcement Division.

Mr. FINNEGAN. Let me say to you that Congressman Reuss in a recent letter to EPA has raised this very point.

[The correspondence with EPA follows:]

NINETY-THIRD CONGRESS
Congress of the United States
House of Representatives
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-C
WASHINGTON, D.C. 20515

April 26, 1973

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

Thank you for sending us copies of your report entitled "The First Two Years: A Review of EPA's Enforcement Program (February 1973)," which our Subcommittee members and staff are now reviewing.

We are concerned by the following sentence which appears on page 5 of that report:

> "The new law [Federal Water Pollution Control Act Amendments of 1972, P. L. 92-500] has also abolished the Refuse Act as an independent basis for bringing court action against industries."

This statement is inaccurate and misleads the public. We request that you retract it.

The Refuse Act is still a viable statute that is available for enforcement against many types of polluters. The 1972 Act neither repealed the Refuse Act nor "abolished the Refuse Act as an independent basis" for prosecuting polluters.

The 1972 Act did not change the basic prohibition of the Refuse Act that a polluter not discharge or deposit refuse into navigable waterways. It simply provided (1) that the Corps of Engineers shall no longer issue permits under the Refuse Act "for a discharge into the navigable waters" (sec. 402(a)(5)); (2) that permits issued under the Refuse Act "shall be deemed to be permits issued under" Title IV of the 1972 Act and that permits issued by EPA or the States under section 402 of the 1972 Act "shall be deemed to be permits issued" under the Refuse Act (sec. 402(a)(4)); and (3) that until December 31, 1974, a discharge shall not be either a violation of sections 301, 306 or 402 of the 1972 Act or a violation of the Refuse Act if a permit has been applied for and final administrative disposition has not been made, unless the failure to make the final administrative disposition is due to the applicant's failure to furnish information reasonably required or requested in order to process the application (sec. 402(k)).

Congress specified, in section 511(b) of the 1972 Act, that discharges of pollutants subject to the Rivers and Harbors Act of 1910 and the Supervisory Harbors Act of 1888 "shall be regulated" solely pursuant to the 1972 Act and shall not be subject to the 1910 or 1888 Acts except as to effect on navigation and anchorage. However, Congress did not, either expressly or by implication, provide a similar limitation on discharges of pollutants subject to the Refuse Act of March 3, 1899. Furthermore, Congress specified in section 511(a) of the 1972 Act that the 1972 Act "shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this Act; (2) affecting or impairing the authority of the Secretary of the Army...(B) under the Act of March 3, 1899..."

Several courts have already ruled that the 1972 Act did not supersede the Refuse Act. In United States v. United States Steel Corp., 5 ERC 1125 (Feb. 27, 1973; D.C.N.C. Ill. E.D.), the court stated:

> "Suffice it to say that the 1972 Amendments did not purport to repeal the Refuse Act, which on the contrary, was specifically preserved by the 1970 Amendments to the Federal Water Pollution Control Act (33 U.S.C. Subsec. 1174(2)) and by Section 511(a)(2)(B) of the 1972 Amendments (P.L. 92-500)... we must construe statutes to be compatible insofar as possible, and we find no compelling reason to hold that the abatement powers under the Refuse Act have been repealed by the Amendments to the Federal Water Pollution Control Act."

Similar rulings were made in the Order of January 31, 1973 issued in United States v. Rohm and Haas Co., Civil Action No. 71-B-792, (D.C. S.C. Tex., Houston Div.); and the Order of January 11, 1973, issued in United States v. Consolidation Coal Co., Civil Action No. 72-31-F (D.C. N.D. W. Va.).

As the law stands now, a person or corporation is subject to the criminal penalties and civil remedies of the Refuse Act of 1899 if such person or corporation discharges "refuse" into navigable waters or their tributaries and (1) has not filed an application for a permit either under the Refuse Act of 1899 or under the 1972 Act; or (2) has filed such an application but has failed to furnish information reasonably required or requested to process the application; or (3) has obtained a permit under either the 1899 or 1972 Act, but is violating the terms or conditions of that permit; or (4) is a defendant in a Refuse Act suit filed prior to October 18, 1972 involving such discharges; or (5) is discharging oil or a hazardous substance for which no permit is required or granted and the discharge of which is forbidden under section 311, and thus not excepted under section 402(k) of the 1972 Act. If the substance discharged is a "pollutant", as defined in sec. 502(6) and (12) of the 1972 Act, the violator may also be subject to the enforcement provisions of sections 309 and 505 of the 1972 Act.

We believe that the Refuse Act still remains "an independent basis for bringing court action against industries and others in the circumstances stated above. The continuing availability of the Refuse Act is important for several reasons:

(1) The Refuse Act, with its relatively simple and clear cut statutory structure, provides both criminal penalties and civil remedies, including injunction and reimbursement for damages and for cleanup costs, under a substantial body of judicial precedent which facilitates its enforcement;

(2) A citizen who provides information leading to a conviction under the Refuse Act is entitled to one-half the penalty imposed, but is not entitled to such award for information leading to a conviction under the Federal Water Pollution Control Act. Section 505 of the latter Act, although allowing a citizen to sue and to obtain litigation costs if the court determines that such award is appropriate, imposes a much heavier burden on, and provides no financial reward to, the average citizen concerned about water pollution. Thus, the Refuse Act will help stimulate citizen participation in providing information to the Government concerning polluters to a greater extent than will the Federal Water Pollution Control Act;

(3) Some discharges which are prohibited by the Refuse Act are not, or may not be, prohibited by the 1972 Act. Thus, the word "refuse" (in the Refuse Act) has been broadly defined by the Supreme Court to include all foreign substances and pollutants. Only sewage and runoff from streets and sewers in a liquid state are excepted. United States v. Standard Oil Co., 384 U.S. 224, 230 (1966); United States v. Republic Steel Corp., 362 U.S. 482, 490 (1960). In contrast, section 502(6) of the 1972 Act defines "pollutant" with much greater specificity and thus may result in rulings that except some types of discharges which the Refuse Act does not except. Indeed, the 1972 Act definition of "pollutant" does not include "oil," whereas courts have ruled that oil discharges are subject to the Refuse Act; and

(4) Furthermore, the 1972 Act prohibits discharges of pollutants only from a "point source," and therefore a discharge from a source which EPA or the courts hold is not a point source would not be subject to the permit system, or to the enforcement provisions of the 1972 Act. In contrast, the Refuse Act has no comparable limitation. Thus, the Federal District Court in Natural Resources Defense Council v. Grant, (E.D., N.Car., Feb. 5, 1973) granted the plaintiffs' motion for a preliminary injunction on the ground that there was substantial probability that the discharge into navigable waters of siltation from non point sources resulting from construction of the Chicod Creek Watershed Project would violate the Refuse Act.

Congress can, but did not, repeal the Refuse Act, and EPA cannot, and ought not by indirection try to do so. We therefore request (a) that you promptly announce that EPA will continue to use the Refuse Act as one of the bases for instituting court action against polluters in instances authorized by current law; (b) that to the maximum extent possible you send a copy of that announcement to all recipients of your February 1973 enforcement review report; and (c) that you invoke the Refuse Act as a basis for enforcement in all cases wherein it is appropriate to do so.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Guy Vander Jagt

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 30 1973

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

OFFICE OF THE ADMINISTRATOR
RECEIVED
May 30, 1973
CONSERVATION AND NATURAL REBOURCES SUBCOMMITTEE

Dear Mr. Chairman:

This is in response to your letter of April 26, 1973, in which you requested that we retract the following statement appearing on page 5 of EPA's report, "The First Two Years: A Review of EPA's Enforcement Program:"

> "The new law [the Federal Water Pollution Control Act Amendments of 1972] has also abolished the Refuse Act as an independent basis for bringing court action against industries."

This statement is, as you point out, incorrect. I appreciate your calling this error to my attention. However, I think that there is little potential for damage. Within EPA there is no misunderstanding about the continuing applicability of the Refuse Act. In January, Headquarters instructed regional enforcement personnel that, except where an application has been filed for a permit, either under the Refuse Act on or before October 18, 1972, or under Section 402 of the Federal Water Pollution Control Act after October 18, 1972, the Refuse Act remains fully available as an enforcement tool. After December 31, 1974, even these limited exclusions do not apply.

Of course, we intend to rely primarily upon Section 309 of the Federal Water Pollution Control Act as an enforcement mechanism. That section provides heavy civil and criminal penalties which will serve as effective deterrents to polluters. However, we are fully aware that the Refuse Act remains available to us, and we intend to utilize it wherever necessary to secure abatement of pollution.

Sincerely,

Robert W. Fri
Acting Administrator

Mr. WHITE. Let me distinguish between certain things that I feel we can use the Refuse Act for. In any accidental spills, discharges—things of this nature—clearly the Refuse Act still applies. However, I believe that I can safely say it will be the administration's position that if we have a permit violation, we feel you have provided us with a tool that is much stronger by way of penalties, both criminal and civil. We would not need the Refuse Act, although it could be used from a technical, legal sense. Yes; we agree with that.

Mr. FINNEGAN. There may be instances in which it would be useful because of time limitation on the requirements of the 1972 act with regard to use of those penalty provisions. Is that not correct?

Mr. WHITE. I can envision situations where it would be useful.

Mr. FINNEGAN. The 1971 enforcement conference provided that Dade County do something about preventing discharges into waterways from vessels on which people live.

Dade County officials told us today that the vessel pollution statute that was passed by Congress preempted them from doing anything.

Is that your understanding?

Mr. WHITE. It does not preempt them. I think that once the regulations are developed, of course, anything less stringent than we develop would be preempted. Anything more stringent adopted by the local agency would encourage——

Mr. FINNEGAN. Such as no discharge?

Mr. WHITE. Yes.

Mr. FINNEGAN. What requirements do you now put in plants that are going to be built in Dade County and elsewhere that would insure a fail-safe system?

Let me use an illustration. A few days ago in Fairfax County, Va., I understand that, because of rain and other factors, raw sewage was allowed to be discharged eventually into the Potomac from a sewage treatment plant. The powerplant blew out, the pole blew out, and even the fail-safe system blew out, and for several hours raw sewage was dumped into the waters.

What are you doing at EPA to prevent such an incident from occurring in Dade County?

I would like Mr. Franzmathes to respond to that.

Mr. FASCELL. Mr. Franzmathes?

Mr. FRANZMATHES. If a power pole goes—what we are looking at is dual units where there would be a margin of safety. We are looking for at least two sources of power on projects, even when there are two separate sources of power coming in that are not interconnected so if we have one pole closed down, it falls across the powerline of the other one——

Mr. FINNEGAN. Which is what happened in Fairfax County.

Mr. FRANZMATHES. We are trying to move from this error in design, and we are also looking at certain instances of their own generator where you can actually do it, but you have got to have a certain sized plant to do this.

Mr. FINNEGAN. There was a 2- to 3-year study done by MPR Associates for EPA. The initial report was provided to our committee about a year ago, and the study was completed, I think, earlier this year.

Enclosure (1)

STATE OF FLORIDA ONLY

1. Total Spill Gallons Reported 67,032

   19 Case Quantity Unknown

2. Types of Oil Spilled (199 cases)

(a)	Bunder "c" or #6 fuel	66 cases	33% of total
(b)	Bilge Waste	24 cases	12%
(c)	Light Fuel Oils (diesel, kerosene, etc)	65 cases	33%
(d)	Gasoline	8 cases	4%
(e)	Jet Fuels	6 cases	3%
(f)	Others (lube oil, tallow, pine oil, hydraulic fluid, asphalt, waste)	30 cases	15%

3. Sources of Spills (199 cases)

(a)	Motor vessels	138 cases	69% of total
(b)	Facilities (including waste pit & sumps in the ground)	34 cases	17%
(c)	Barges	22 cases	11%
(d)	Other (motor vehicles and unknowns)	5 cases	3%

4. Most Common Causes of Spills in Florida (199 cases)

(a)	Tank Overflows	62 cases	31% of total
(b)	Bilge Pumping	33 cases	17%
(c)	Hose or pipe ruptures or leakage, improperly plugged scuppers	32 cases	16%
(d)	Improper ballasting or de-ballasting	12 cases	6%
(e)	Collision or sinking	10 cases	5%
(f)	Hoses not drained prior to disconnect	10 cases	5%
(g)	Hole in hull due to deterior-ation	9 cases	4%
(h)	Leaching through soil	4 cases	2%
(i)	Motor vehicle accidents	1 case	1%
(j)	Other personal errors (equip-ment failures & unknown cases	26 cases	13%

5. Notification of Spill was received for 65% of cases

   130 notified 69 did not

6. Florida spills reported to CCGD7 and processed 199

   cases closed 176
   cases open 23

DEPARTMENT OF TRANSPORTATION,
Washington, D.C., May 21, 1973.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: Reference is made to your letter of 27 April 1973 concerning your Subcommittee's hearings in Miami, Florida, on environmental problems of the Florida Area and Admiral Bender's reply of 7 May 1973.

In accordance with your request, I am enclosing a copy of my prepared statement. Additional copies will be forwarded as soon as reproduction is completed.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

To what extent does the Coast Guard consider the effects of such work on natural resources, wetlands, air and water quality, fish and wildlife, esthetics, historic sites, and other public interests? (We note that no mention of these effects is made in section 115.60(a) of the regulations which sets forth the matter that the District Commander must cover, after study and hearings, in his report to the Commandant).

(b) Does the Coast Guard require that the bridge or causeway applicant affirmatively prove that the proposed work is in accord with the public interest, including the need to avoid the piecemeal destruction of our estuarine resources?

(c) Does the Coast Guard consult, pursuant to the Fish and Wildlife Coordination Act, with the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration before acting on any request for a permit? If not, why not?

(d) Does the Coast Guard prepare an environmental impact statement before acting on a request for a permit? If not, why not?

(e) To what extent does EPA comment on these permit applications?

(f) On September 9, 1972, the Corps of Engineers promulgated a revised definition of navigable waters of the United States as that term is used in various Corps laws, including the 1899 Act. (The Corps' definition is printed in 37 F.R. 18289 and on page 1366 of Part 3 of our hearings entitled "Mercury Pollution and Enforcement of the Refuse Act of 1899," copy enclosed). When will the Coast Guard adopt a similar definition with respect to the exercise of authority under section 9 of the 1899 Act and other statutes it administers?

(g) Please provide to us the data requested in enclosed Table B.

(h) Section 114.25 of the Coast Guard regulations provides:

"The Commandant will approve plans and issue permits authorizing bridges across navigable waters, in cases where the application therefor is submitted after the commencement or completion of the bridges subject to the following rules: Approval will be limited to those cases where the necessary primary authority, State or Federal as the case may be, validly existed, when the work was innocently constructed, and where the work will not unreasonably interfere with navigation. Upon issuance of the permit, applicant will be informed that the law contemplates prior approval and that in the future plans must be submitted in ample time for their consideration by the Commandant before construction is begun."

What is the legal basis for the Coast Guard to determine, in advance of any permit application, that the "Commandant will approve" such work?

(i) Section 114.40 of the regulations states:

"Although the Coast Guard has the authority and responsibility for enforcement of the applicable provisions of law for the protection and preservation of navigable waters, it has been the long standing policy to secure compliance with their provisions short of legal proceedings. Accordingly every effort is made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, no action is taken when the violation is minor, unintentional, or accidental, and the party responsible makes good the damages suffered. It is the established policy of the Coast Guard not to recommend prosecution when the violation is trivial, apparently unpremeditated, and results in no material public injury. Prosecution is recommended in all cases of willful or intentional violations and all cases in which the parties responsible refuse or neglect to remove the unlawful structure or to make good the damages suffered."

The Corps took a similar position concerning illegal activities under section 10 of the 1899 Act (see p. 16–23 of our committee's August 10, 1972, report, H. Rept. 92–1323, entitled: "Increasing Protection for our Waters, Wetlands, and Shorelines: The Corps of Engineers," copy enclosed), and our committee said (pp. 22–23):

"The committee recognizes, of course, that prosecution of illegal acts is not always desirable. However, it believes that all of the Corps' district engineers should seek to 'vigorously prosecute,' civilly or criminally, such offenders more frequently than has been done in the past. Unless it is positively clear that the public interest is better served by the issuance of 'after-the-fact' permits, the objective should be not to legalize an illegal act, but to halt such acts and protect our wetlands.

"The test applied by the Corps, as explained by Colonel Sargent—that the Corps will not 'recommend' prosecution unless 'it is clear * * * that the violator willfully and knowingly violated the law'—is one not set forth in the statute itself.

"Although the Supreme Court has not yet ruled on what, if any, scienter (knowledge) requirements the Refuse Act imposes, a long line of lower Federal court decisions has consistently held that a violation of the Refuse Act (33 U.S.C. 407) does not require that the discharger act 'willfully and knowingly." As the court wrote in *U.S.* v. *U.S. Steel Corp.*, 328 F. Supp. 354, 356 (D.C., N.D., Ind. 1970):

" 'The public is injured just as much by unintentional pollution as it is by deliberate pollution and it would have been entirely reasonable for Congress to attack both.'

"The committee believes that the same reasoning applies to cases under section 10 of the River and Harbor Act of 1899. Therefore, *scienter* should not be an element in the decision to prosecute.

"Furthermore, even if *scienter* were a factor in deciding whether to prosecute, the committee believes that the Corps of Engineers should not be the agency to make that determination. The question of *scienter* is a highly complex legal issue. It is the function of the U.S. attorney to determine the lack of presence of *scienter* in deciding whether to prosecute the alleged offender."

Proposed Corps regulations now pending at the Office of Management and Budget are, according to General Clarke, designed to meet our committee's objections concerning after-the-fact permits.

Please provide to us:

(1) A statement as to the legal basis for this "established" Coast Guard policy;

(2) A list of each alleged violation of section 9 of the 1899 Act which occurred in the U.S. since July 1, 1970, which the Coast Guard decided not to recommend for prosecution on the basis of its conclusion that it was "minor, unintentional, or accidental, trivial, apparently unpremeditated, and results in no material public inquiry," and, in each case, an explanation of the basis for the Coast Guard's conclusion;

(3) A list of all such violations in the United States since July 1, 1970, for which prosecution was recommended, indicating the basis for the recommendation and the results thereof.

(j) On November 10, 1972, Commander R. E. Nielson, of the Coast Guard's Seventh District, wrote to Mr. Joseph Z. Fleming that the Coast Guard "has not elected to assert jurisdiction" over the Venetian Waterway in Hollandale, Fla., or to require a permit under section 9 of the 1899 Act for a bridge over this waterway constructed by Mailman Development Corp. and GAC Properties, Inc.

(1) Please state the legal basis for the Coast Guard's refusal (i) to "assert jurisdiction" over this waterway, and (ii) to require a permit for this bridge construction.

(2) Is this waterway navigable? If not, please state basis for this determination.

(3) Has the Coast Guard ever asserted jurisdiction over this waterway for any other purpose?

(4) Please consult with the Corps of Engineers to determine whether it has ever exercised jurisdiction over this waterway for any purpose, and include its response in your statement.

(5) Please provide to us a copy of all letters, memoranda, notes, and other correspondence and documents in Coast Guard files concerning this bridge and waterway.

(6) We would welcome your views, comments, and recommendations on other matters relating to the Coast Guard's activities in the Florida area.

If your detailed prepared statement for the record exceeds six (6) typed pages, letter size, double spaced, please prepare a summary not exceeding that length for your oral presentation. In accordance with the committee's rules (copy enclosed), please provide to us in Washington, D.C., by May 21, 1973, at least 20 copies each of your summary and your prepared statement. In addition, we suggest that you bring to the hearing at least 50 more copies of each for use by the reporter, the subcommittee, and the press.

We shall welcome your views.

Sincerely,

HENRY S. REUSS, *Chairman.*

APPENDIXES

(Appendixes 5–12 appear in part 1–B of these hearings)

APPENDIX 1.—MATERIALS SUBMITTED BY THE U.S. COAST GUARD IN RESPONSE TO SUBCOMMITTEE LETTER OF APRIL 27, 1973

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 27, 1973.

Admiral CHESTER R. BENDER,
Commandant, U.S. Coast Guard, Department of Transportation, Washington, D.C.

DEAR ADMIRAL BENDER: Our subcommittee will hold hearings in Miami, Fla., on Friday, May 25, and Saturday, May 26, 1973, on environmental problems of the Florida area, including the coastal and other waters of the Gulf of Mexico and the Atlantic Ocean. The hearings will be held in the County Commission Chambers, Dade County Court House, 73 W. Flagler Street, Miami, Fla., beginning at 9:00 a.m. each day.

We request that you testify at those hearings on Friday, May 25. If your other commitments preclude your testifying on that date, please designate another Coast Guard official familiar with these problems to testify on your behalf. We would appreciate your confirming to us by May 7, 1973, that you will be able to testify on that date or advising us by then whom you have designated to represent you.

Some of the issues and matters which should be covered in your prepared statement are as follows:

1. Please provide to us the data requested in the enclosed Table A.

2. Please describe in detail the Coast Guard's non-military functions and duties in the Florida area, citing the statutory authority therefor and indicating the extent and location of personnel and equipment to carry out these functions and the extent to which additional funding, personnel, and equipment are needed so effectively to carry out these functions and duties.

3. Enclosed is a copy of our committee's September 18, 1972, report "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca" (H. Rept. 92–1401). Please describe to us the Coast Guard's efforts to date in the Florida area to carry out recommendations B through F on page 6 of the report.

4. (a) Please indicate to us the actions taken to date by the Seventh Coast Guard District to implement Commandant Instruction 5922.11 of September 22, 1972, concerning pollution law enforcement.

(b) Please describe the extent to which the Coast Guard and EPA share and carry out their duties and responsibilities under the Federal Water Pollution Control Act (P.L. 92–500) with respect to discharges of oil and hazardous substances.

5. Section 9 of the River and Harbor Act of 1899 makes it unlawful "to construct or commence the construction of any bridge, dam, dike, or causeway over or in any" navigable waterway "until the consent of Congress" is obtained (33 U.S.C. 401). The General Bridge Act of 1946 authorized the Corps of Engineers to approve the location and plans for such bridges and causeways (33 U.S.C. 525). The Department of Transportation Act of October 15, 1966, transferred this approval authority to the Coast Guard (P.L. 89–670; 49 U.S.C. 1655(a)(i)(K) and 1655(g)(6)(C)). The Coast Guard's regulations implementing this and other statutes are set forth in 33 CFR, Parts 114 and 115.

(a) Section 114.10 of the regulations provided that:

"The decision as to whether a permit will be issued must rest primarily upon the effect of the proposed work on navigation."

It had to do with these fail-safe safety standards.

Do you have any knowledge about that?

Mr. FRANZMATHES. I reviewed both reports and draft guidelines that are coming in. I believe we have implemented draft guidelines in our projects here in Florida, and the final guidelines are expected out within a year. I am sure it is not too far off. I just cannot recall the exact date.

Mr. FINNEGAN. Would you provide me with a copy of the draft guidelines?

Mr. FRANZMATHES. Yes, sir.

[NOTE.—The draft guidelines subsequently submitted by Mr. Franzmathes are in the subcommittee files.]

Mr. FASCELL. Thank you very much for your patience. You are extremely cooperative. We appreciate the tremendous amount of time you have given and the effort you have made in responding to this committee's call.

Thank you.

[Whereupon, at 7 p.m., the subcommittee adjourned, to reconvene at 9 a.m., Saturday, May 26, 1973.]

Enclosure (1)

1 April 1971 - 31 July 1972

Cases closed with mitigation to zero

FWPCA 1970 law	93	
1972 law	0	

Cases closed with penalty collection

FWPCA 1970 law	23	$16,600.00
1972 law	0	- - -

1 August 1972 - 1 April 1973

Cases closed with mitigation to zero

FWPCA 1970 law	17
1972 law	9

Cases closed with penalty collection

FWPCA 1970 law	15	$14,850.00
1972 law	16	8,100.00

1 April 1971 - 1 April 1973

Case closed with warning under 1899 Act --- 3

7. Government Cost of Cleanup for Florida Spills

(a)	Total Spent	$68,782.59
(b)	Coast Guard materials & manpower	17,317.69
(c)	Total charged to Pollution Fund	51,464.90
(d)	Total Collections	19,856.50
(e)	Collections for CG material & manpower	17,000.00
(f)	Total collected for Pollution Fund	2,856.50
(g)	TOTAL OUTSTANDING	$49,926.09
(h)	BILLED & OUTSTANDING	6,928.72
(i)	TOTAL OUTSTANDING W/SPILLER UNK.	41,997.37

The following are instructions for interpreting the data compiled for our pollution reporting system.

DSN

Time of Discharge or Alert - Eight Digits

Indicate the estimated local date of intial discharge, casualty, or incident; or, if there was no discharge, indicate thedate of the initial alert. For the particular date, each spill should have an assigned sequence number.

DIGITS 1 and 2	CALENDAR YEAR
	Indicate by last 2 digits of the year
3 and 4	MONTH
	01 January 02 February 03 March (ETC.)
5,6,7, and 8	DATE-TIME GROUP
	5 and 6 - Day of Month 7 and 8 - Sequence No. of Spill (01-99) Sequentially number all spills occuring on the particular day. Do not repeat numbers.
EXAMPLE	

Fifth spill on 5 March 1971 - DSN 71030505

LOC

Location Water Body or Area - Five Digits

Indicate the location of the discharge or potential discharge.

DIGITS 1 and 2 - State or territory - Use 2 letter code from the list below. (For High Seas areas beyond the contiguous zone, use the following: EC - east coast; WC - west coast; GC - gulf coast)

STATE/TERRITORY	CODE
ALABAMA	AL
ALASKA	AK
ARIZONA	AZ
ARKANSAS	AR
CALIFORNIA	CA
COLORADO	CO
CONNECTICUT	CT

STATE/TERRITORY	CODE
DELAWARE	DE
DISTRICT OF COLUMBIA	DC
FLORIDA	FL
GEORGIA	GA
HAWAII	HI
IDAHO	ID
ILLINOIS	IL
INDIANA	IN
IOWA	IA
KANSAS	KS
KENTUCKY	KY
LOUISIANA	LA
MAINE	ME
MARYLAND	MD
MASSACHUSETTS	MA
MICHIGAN	MI
MINNESOTA	MN
MISSISSIPPI	MS
MISSOURI	MO
MONTANA	MT
NEBRASKA	NE
NEVADA	NV
NEW HAMPSHIRE	NH
NEW JERSEY	NJ
NEW MEXICO	NM
NEW YORK	NY
NORTH CAROLINA	NC
NORTH DAKOTA	ND
OHIO	OH
OKLAHOMA	OK
OREGON	OR
PENNSYLVANIA	PA
RHODE ISLAND	RI
SOUTH CAROLINA	SC
SOUTH DAKOTA	SD
TENNESSEE	TN
TEXAS	TX
UTAH	UT
VERMONT	VT
VIRGINIA	VA
WASHINGTON	WA
WEST VIRGINIA	WV
WISCONSIN	WI
WYOMING	WY
CANAL ZONE	CZ
PUERTO RICO	PR
VIRGIN ISLANDS	VI

DIGITS 3, 4 and 5 - Area of spill coded as follows:

INLAND AREA - Environmental Protection Agency OSC responsibility under Section 306.2 of the National Contingency Plan, as implemented by Annex IV of the applicable regional contingency plan.

101 Roadsteads (or other large bodies of open internal waters)
102 Port (including harbor areas)
103 Terminal or dock
104 Beach
105 Channel (not specified above)
106 River area
107 Non-Navigable Area

COASTAL AREA (including Great Lakes) - Coast Guard OSC responsibility under Section 306.2 of the National Contingency Plan, as implemented by Annex IV of the applicable regional contingency plan.

201 Bay, estuary, or sound
202 Port (including harbor area)
203 Terminal or dock
204 Beach
205 Channel, canal or inlet (not specified above)
206 River area
207 Non-Navigable Area
208 Ocean or Great Lakes

CONTIGUOUS ZONE - (3-12 miles offshore)

3-- Indicates miles offshore in digits 4 and 5

HIGH SEAS (over 12 miles offshore)

4-- Indicate miles offshore in digits 4 and 5
500 High Seas - 100 or more miles offshore

EXAMPLES

--Terminal discharge in Louisiana coastal area -LOC.LA203
--High Seas discharge - 42 miles off Gulf Coast -LOC.GC442
--Contiguous Zone discharge 4 miles off Virginia coast LOC.VA304

MAT

Material - Two Digits

Indicate the type of substance which was discharged or which threatened to discharge. If the pollutant can be described by more than one of the codes below, enter the code describing the most important characteristic in terms of water pollution as follows:

01 Grade A--flammable liquids having a Reid vapor pressure of 14 pounds or more. Examples: casing head (Natural gasoline), very light naphthas, and certain solutions of petroleum gases in gasoline such as the so-called butane blend.

02 Grade B--flammable liquids having a Reid vapor pressure of under 14 pounds and over 8 and 1/2 pounds. Most commercial gasolines are in this category.

03 Grade C--flammable liquids having a Reid vapor pressure of 8 and 1/2 pounds or less and a flashpoint of 80° F. or below. Most crude oils, some cut back asphalts(asphalt thinned with a volatile oil to make it fluid so that it can be used like paint), creosote, benzene, toluene, and alcohol are examples.

04 Grade D light--combustible liquids having a flashpoint below 150° F. and above 80° F. Examples: light fuel oils, distillate fuel oil, and kerosene.

05 Grade D heavy--combustible liquids having a flashpoint below 150° F. and above 80° F. A few very heavy crude oils fall into this group.

06 Grade E diesel--Diesel oil.

07 Grade E heavier than diesel oil--Examples: Bunker C, road oil, coal tar, asphalt, and heavy fuel oils.

08 Grade E lubricating oil--engine lubricating oil.

09 Grade E animal and vegetable oils.

10 Miscellaneous waste oil.

11 Other oil.

21 Hazardous substance--solid, lighter than water.

22 Hazardous substance--solid, heavier than water.

23	Hazardous substance--solid, very soluble in water.
24	Hazardous substance--liquid, lighter than water.
25	Hazardous substance--liquid, heavier than water.
26	Hazardous substance--liquid, very soluble/miscible in water.
27	Hazardous substance--gas, very soluble in water.
31	Untreated sewage waste.
35	Sewage sludge
41	Refuse or garbage
45	Construction or demolition debris
51	Dredge spoil.
60	Other solid.*
70	Other liquid.*
80	Other gas.*
99	Unknown.

* Specify in text.

Example--Lube oil discharge: MAT.08

QTY

Quantity Spilled-- Eight Digits

Estimate the amount of pollutant which actually entered the navigable waters of the U. S. Express your estimate in gallons except when code for material indicates the pollutant to be a solid. If the material is a solid, indicate quantity in pounds. The final digit should indicate gallons (G) or pounds (P).

EXAMPLES: --Potential Spill	QTY.0000000G
--8 Million Gallons	QTY.8000000G
--53 Gallons	QTY.0000053G
--4500 Pounds of Fertilizer	QTY.0004500P
--Unknown	QTY.

SRC

Source - Two Digits

Insert the code which best describes the activity in which the source or suspected source of the discharge or near-discharge is normally engaged. The source will not always be the same as the party responsible for causing the discharge or near-discharge. (Example: If a barge cargo tank overflows, the barge should always be considered the source even though personnel error or equipment failure on shore may have caused the incident.) If the source is believed to be one of the six general classes listed below (vessel, marine facility, etc.) but the specific type is not known, enter 00, 10, 20, 30, 40, or 50, as appropriate. A transfer hose should be considered part of the vessel, vehicle, or facility which owns it. Wherever possible identify the source specifically in message text.

MARINE TRAFFIC SYSTEMS

Vessel

00 Other vessel (specify in text) or unknown type of vessel
01 Passenger, self-propelled
02 Dry Cargo, self-propelled
03 Tanker, self-propelled
04 Towboat or tugboat
05 Dry Cargo barge
06 Tank barge
07 Fishing
08 Recreational
09 Combatant

Marine Facility

10 Other transportation-related marine facility (specify in text)
11 Onshore Bulk cargo transfer
12 Onshore fueling
13 Onshore non-bulk cargo transfer
14 Offshore bulk cargo transfer
15 Offshore fueling
16 Offshore non-bulk cargo transfer

LAND TRANSPORTATION SYSTEM

Vehicles

20 Other land vehicle (specify in text) or unknown type of land vehicle
21 Rail vehicle liquid bulk

22 Rail vehicle dry bulk
23 Rail vehicle general cargo
24 Rail vehicle transfer
25 Highway vehicle liquid bulk
26 Highway vehicle dry bulk
27 Highway vehicle general cargo
28 Highway vehicle passenger

Land Facility

30 Other land transportation facility (specify in text) or unknown type of land transportation facility
31 Railway cargo transfer
32 Railway fueling facility
33 Highway cargo transfer
34 Highway fueling

PIPELINES

40 Other transportation-related pipeline
41 Onshore transportation-related pipeline
42 Offshore transportation-related pipeline

NON-TRANSPORTATION-RELATED FACILITIES

50 Other onshore non-transportation-related facility
51 Onshore refinery
52 Onshore bulk storage facility (includes tank farms)
53 Onshore industrial plant or processing facility
54 Onshore oil or gas production facility
55 Other offshore non-transportation-related facility
56 Offshore production facility

MISCELLANEOUS

80 Miscellaneous - other source not covered by any of the categories listed above (specify in text)
99 Unknown type of source

EXAMPLE: --Refinery SRC.51

CAU

Cause - Two Digits

Select the code which best describes the most important event which caused the spill or near spill.

CASUALTY

00 Other casualty (specify in text)
01 Collision between source and another vehicle
02 Collision between source and fixed object
03 Fire
04 Explosion
05 Grounding
06 Capsizing or Overturning
07 Sinking or Foundering
08 Well blowout

RUPTURE, LEAK OR STRUCTURAL FAILURE

10 Other cargo rupture or leak (specify in text)
11 Tank rupture
12 Other major vehicle structural failure; not collision
13 Other minor vehicle structural failure; not collision
14 Storage tank rupture
15 Other storage tank leak
16 Hose rupture
17 Line leak
18 Pipe rupture
19 Pipe leak
21 Weld failure
22 Corrosion or rust
23 Defective fitting valves or closures
24 Loose fitting valves or closures

EQUIPMENT FAILURE

30 Other equipment failure (specify in text)
31 Valve failure
32 Pump failure
33 Alarm failure
34 Automatic shutdown device failure

PERSONNEL FAILURE

40 Other personnel failure (specify in text)
41 Tank overflow, inadequate soundings
42 Tank overflow, incorrect valve alignment
43 Tank overflow, list in trim error
44 Tank overflow, failure to shut down when topped off
45 Tank overflow, topping off at excessive rate
46 Incorrect valve handling
47 Flanges not properly secured
48 Improper hose connection
49 Overpressurization of cargo tank

DELIBERATE DISCHARGES

50 Other deliberate discharges (specify in text)
51 Pumping bilges
52 Pumping ballast
53 Disposal of other waste oil
54 Discharge under EPA permit
55 Discharge under COE permit
56 Sabotage
57 Vandalism

NATURAL PHENOMENON

60 Other natural phenomenon (specify in text)
61 Natural seepage thru sea bottom
62 Heavy unanticipated rains
63 Flooding
64 Unanticipated freezing
65 Unanticipated heavy winds
66 Unanticipated heavy seas
67 Unanticipated external heat

UNKNOWN

99 Unknown cause

RES

Response - Five Digits

Indicate the response activity taken by Coast Guard under the National and Regional Contingency Plan.

Phase I - Notification
Phase II - Containment and Countermeasures
Phase III - Cleanup and Disposal
Phase IV - Restoration
Phase V - Recovery of Damages and Enforcement

Put in the numbers of the response phases undertaken in a 5-digit arabic code in sequence. If no action, enter 0's.

EXAMPLES:
(a) Received report of spill. No phase I, II, III, IV, or V action undertaken: RES.00000
(b) Received report of pill. Federal, state, and local authorities notified; spill contained: RES.12000
(c) Received report of spill. Notification, cleanup and enforcement activity involved in response, but no containment or restoration: RES.10305

IDT

Source Identifier - Six Digits

This code is intended to identify the particular source or suspected

source of the spill, or near-spill, as classified in SRC.

Vessel

If the suspected source was a U.S. vessel, enter its official number (listed in CG-408), or if the source is a U.S. public vessel insert the call sign group. If it was a foreign vessel, enter the call sign group. If suspected source is small craft with no call sign or official number, insert the state license number. If official number, call sign group or state license number is unavailable or unknown, insert zeros. Enter information from the left.

EXAMPLES:

--SIOUX FALLS VICTORY	IDT.KACR00
--CAPE MAY	IDT.WA3397
--UNKNOWN	IDT.000000

Facility

100000 Facility regulated for spill prevention purposes by DOT
200000 Facility regulated for spill prevention purposes by EPA
300000 Facility owned and operated by Federal grant
400000 Other facility (specify in text) or unknown facility

DIS

District Two Digits

Enter the number of the district in which the spill occurred. Use both digits.

EXAMPLES:

--Twelfth District	Dis. 12
--Third District	Dis. 03

NOT

Notifier Identification - Two Digits

Indicate who originally notified the Coast Guard of the spill. Use two digits code below.

01 Unit responsible for discharge

(Notification by other than spiller)

10 Coast Guard aircraft

11 Coast Guard ship

12 Coast Guard boat

13 Coast Guard shore unit

14 Coast Guard Auxilliary

20 EPA

25 Other federal agency

30 State agency

35 Local government agency

40 Commercial aircraft

41 Commercial ship

42 Commercial boat

43 Commercial shore facility

44 Private individual

45 Private boater

50 Anonymous

99 Unknown

EXAMPLE: Commercial ship reports spill of its cocoanut oil cargo-- NOT.01

OVERALL EXAMPLE

On 6 July 1971 a tank vessel grounds in the Chesapeake Bay spilling an estimated 123,000 gallons of gasoline. The master radios Group Baltimore and all appropirate authorities are notified. Because of high wind, the gasoline rapidly dissipates and before any response can be made, the incident is finished. The official number of the vessel is 175228. This is the sixteenth spill today.

The final SITREP should contain as its last line, the following coded summary statement:

DSN:71070616 LOC.MD201 MAT.02 QTY.0123000G SRC.03 CAU.05 RES.10000 IDT.175228 DIS.05 NOT.01

ENCLOSURE (1)

DAISHC'1 POLLUTION INCIDENT REPORTING SYSTEM INQUIRY RESPO[illegible]REPORT PAGE 1
08/09/73 0714 / MASTER

QA**65A?

DISCHARGE YR-MO-DA-HR	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVNT.	DIST
71 01 02 01	QC	208	02	6		02	99	0AA0A	SHKI00	07
71 01 02 01	QC	333	06	25	G	99	99	0A20A	0A0000	07
71 01 02 02	FL	102	03	1	G	02	43	0A40A	PEKF00	07
71 01 02 02	FL	208	04	0		00	99	1A0AA	0A0000	07
71 01 09 01	FL	208	04	0		00	99	1A0AA	0A0000	07
71 01 09 01	FL	107	08	5	G	99	99	1A0AA	0A0000	07
71 01 10 01	FL	102	03	0		03	99	12A0A	KF1Z00	07
71 01 11 01	FL	205	10	3	G	99	99	1A0AA	0A0000	07
71 01 11 02	FL	203	10	8	G	25	45	12A0A	1A0000	07
71 01 11 03	FL	205	07	10	G	53	99	12A0A	1A0000	07
71 01 12 01	00	203	07	25	G	12	16	1A0AA	1A0000	07
71 01 13 01	00	203	0A	10	G	0A	40	1A20A	0A0000	07
71 01 14 01	FL	202	06	5	G	99	99	1A20A	0A0000	07
71 01 15 01	FL	202	06	2	G	99	99	1A0AA	0A0000	07
71 01 16 01	FL	206	11	3500	G	53	23	1A0AA	4A0000	07
71 01 20 02	FL	102	03	50	G	0A	16	1A0AA	0A0000	07
71 01 20 02	FL	102	08	25	G	11	40	12A4A	1A0000	07
71 01 21 01	FL	203	07	10	G	02	51	12A0A	JVPX00	07
71 01 21 01	0A	202	11	5	G	02	17	0A40A	GWR500	07
71 01 22 01	FL	420	10	0		00	99	1A20A	0A0000	07
71 01 23 01	FL	102	03	400	G	01	46	12A4A	6A5500	07
71 01 24 02	QC	203	07	50	G	03	15	12A0A	A2W400	07
71 01 25 01	FL	203	0A	10	G	02	45	1A0AA	0A0000	07
71 01 25 01	0A	202	07	0		33	53	1A20A	4A0000	07
71 01 25 02	FL	203	0A	2	G	99	99	1A20A	0A0000	07

DATSMON1 POLLUTION INCIDENT REPORTING SYSTEM INQUIRY RESPONSE LIBRARY PAGE 2
04/04/73 HT14 / MASTER

DISCHARGE YR-MO-DA-HR	WATER STATE	ACCT CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INCNT.	DIST
71 01 26 03	SC	203	07	420	G	03	16	12?00A	000000	07
71 01 26 01	GA	202	06	2	G	06	17	09A00	000000	07
71 01 26 01	FL	203	07	5	G	99	99	14A00	000000	07
71 01 26 01	FL	208	03	0		00	99	14A00	000000	07
71 01 26 01	FL	310	10	0		00	99	14A00	000000	07
71 01 28 01	PR	203	04	15	G	12	99	14A00	000000	07
71 01 28 01	FL	105	06	0		00	51	14A00	999?E0	07
71 01 29 01	PR	203	07	75	G	99	99	14A00	000000	07
71 01 29 01	FL	202	07	175	G	10	40	14A00	400000	07
71 01 31 01	FL	308	10	0		00	99	14A00	000000	07
71 01 31 01	FL	203	07	10	G	50	48	12?00A	14A000	07
71 02 01 01	GA	202	06	5	G	06	17	09A00	000000	07
71 02 02 02	FL	102	03	50	G	01	42	12?00A	00S500	07
71 02 02 01	FL	203	06	10	G	02	49	12?00A	000000	07
71 02 03 01	PR	203	07	20	G	12	14	14A00	000000	07
71 02 03 02	FL	102	03	20	G	01	46	12?00A	00S500	07
71 02 07 02	FL	102	06	30	G	04	44	12?00A	WC?960	07
71 02 08 01	FL	102	03	25	G	01	42	14A00A	00S500	07
71 02 10 01	GA	202	07	0		33	53	14A00A	400000	07
71 02 10 01	FL	202	10	80	G	03	45	12?00A	0WZN00	07
71 02 11 01	PR	203	07	400	G	12	31	14A00A	000000	07
71 02 12 01	FL	202	04	55	G	53	40	14A00A	400000	07
71 02 13 01	FL	203	10	1	G	07	46	14A00A	FLSN00	07
71 02 16 01	FL	203	11	400	G	02	52	12?00A	COLH00	07
71 02 17 02	FL	203	04	5	G	04	99	14A00A	000000	07

DISCHARGE YR-MO-DA-HR	WATER STATE	ACDY CODE	MATERIAL	QUANTITY VOL/WGT	U/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVOLVED	DIST
71 02 17 01	FL	202	06	5	G	02	99	1AAAA	000000	07
71 02 18 01	FL	203	07	1	G	40	99	1AAAA	100000	07
71 02 18 02	FL	202	04	5	G	99	99	1AAAA	000000	07
71 02 19 01	FL	201	15	10	G	99	99	1AAAA	000000	07
71 02 19 01	FL	102	03	50	G	40	40	1AAAA	000000	07
71 02 20 01	PR	203	07	100	G	15	16	1AAAA	000000	07
71 02 21 02	PR	203	10	100	G	03	99	1AAAA	000000	07
71 02 21 01	PR	203	07	15	G	09	16	1AAAA	000000	07
71 02 22 01	PR	203	07	5	G	25	45	1AAAA	100000	07
71 02 22 01	AA	202	04	50	G	02	44	0AAAA	HOEA00	07
71 02 24 01	AA	202	09	0		53	30	1AAAA	400000	07
71 02 24 02	FL	203	10	10	G	99	99	1AAAA	000000	07
71 02 24 01	FL	102	03	200	G	03	16	12AAA	HOWA00	07
71 02 24 01	FL	201	07	100	G	99	99	1AAAA	000000	07
71 02 25 01	FL	102	03	30	G	41	18	1AAAA	400000	07
71 02 26 05	SC	205	07	10	G	99	99	1AAAA	400000	07
71 02 26 01	FL	203	06	5	G	99	99	1AAAA	000000	07
71 02 28 01	FL	203	06	3	G	99	99	1AAAA	000000	07
71 03 01 02	FL	203	04	1	G	99	99	1AAAA	100000	07
71 03 01 01	FL	205	04	1	G	80	31	1AAAA	000000	07
71 03 03 01	FL	205	11	5	G	02	52	1AAAA	IEXD00	07
71 03 06 01	FL	203	04	5	G	06	49	12AAA	100000	07
71 03 07 01	PR	203	04	100	G	99	99	1AAAA	000000	07
71 03 08 01	PR	203	07	50	G	15	99	1AAAA	100000	07
71 03 09 01	FL	202	04	55	G	53	40	1AAAA	400000	07

DISCH YR-MO-DA-HR-MN	AGE	WATER STATE	ACCT CODE	MATERIAL	QUANTITY VOL/WGT G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
71 03 10 01		GA	202	07	174 G	03	32	00306	244230	07
71 03 11 01		FL	208	03	3	00	99	10200	000000	07
71 03 12 01		FL	201	11	5 G	03	49	10200	KE6F00	07
71 03 12 02		PO	203	06	50 G	25	17	10000	000000	07
71 03 12 01		PO	203	07	110 G	15	16	10000	100000	07
71 03 12 02		FL	203	06	2 G	99	99	10200	100000	07
71 03 15 01		FL	203	07	20 G	03	16	10000	P10000	07
71 03 15 02		FL	205	06	2 G	99	99	10000	100000	07
71 03 16 01		FL	203	06	5 G	07	49	10000	100000	07
71 03 17 01		FL	203	06	5 G	53	16	10000	100000	07
71 03 17 01		PO	203	07	400 G	12	18	10000	000000	07
71 03 17 02		FL	203	06	3 G	06	24	12000	W09006	07
71 03 18 06		SC	203	05	100 G	03	46	10000	200000	07
71 03 19 01		GA	202	06	2 G	32	40	00005	IC4P00	07
71 03 19 01		FL	203	06	5 G	07	49	12000	100000	07
71 03 21 01		GA	202	07	100 G	11	19	00005	100000	07
71 03 22 01		FL	203	11	10 G	99	99	10000	100000	07
71 03 23 01		FL	203	07	40 G	53	18	12345	100000	07
71 03 24 01		FL	203	06	8 G	99	99	10000	000000	07
71 03 25 01		PO	203	07	80 G	11	48	10000	100000	07
71 03 29 01		FL	103	06	10 G	80	63	12000	000000	07
71 04 01 10		SC	207	10	100 G	25	53	10030	000000	07
71 04 01 01		PO	203	07	120 G	11	99	10000	000000	07
71 04 01 02		FL	208	05	0	00	99	10000	000000	07
71 04 01 02		FL	102	03	40 G	99	99	10000	000000	07

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DISCHARGE YRMODAHRMN	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVNT.	DIST
71 04 02 01	FL	202	07	75	G	99	99	1AAAA	1AAAAA	07
71 04 03 01	FL	102	06	80	G	09	99	1AAAA	0AAAAA	07
71 04 04 01	FL	202	06	2	G	99	99	1AAAA	1AAAAA	07
71 04 05 01	NA	202	11	0		53	30	3AAAA	4AAAAA	07
71 04 05 01	FL	202	07	10	G	99	99	1AAAA	0AAAAA	07
71 04 06 01	FL	202	06	6	G	99	99	1AAAA	1AAAAA	07
71 04 07 01	NA	206	04	70	G	53	46	1AAAA	4AAAAA	07
71 04 08 01	PA	203	07	15	G	13	16	1AAAA	1AAAAA	07
71 04 08 02	PA	203	07	50	G	11	99	1AAAA	0AAAAA	07
71 04 09 02	FL	202	06	1	G	99	99	1AAAA	1AAAAA	07
71 04 09 01	FL	202	06	1	G	99	99	1AAAA	1AAAAA	07
71 04 10 01	FL	103	06	15	G	07	23	1AAAA	0AAAAA	07
71 04 10 01	NA	202	06	0		07	51	0AAAA	SVJ400	07
71 04 13 01	SC	205	11	180	G	00	16	0AAAA	0AAAAA	07
71 04 14 02	FL	202	10	10	G	07	99	1AAAA	WXA753	07
71 04 16 03	FL	201	06	50	G	99	99	1AAAA	1AAAAA	07
71 04 14 02	FL	202	06	4	G	03	99	1AAAA	KWT000	07
71 04 16 01	FL	202	06	3	G	99	99	1AAAA	1AAAAA	07
71 04 18 01	FL	202	06	6	G	04	49	1AAAA	WN3763	07
71 04 19 01	FL	202	06	9	G	99	99	1AAAA	1AAAAA	07
71 04 19 01	VI	303	07	20	G	03	99	1AAAA	0AAAAA	07
71 04 19 02	FL	202	07	9	G	99	99	1AAAA	1AAAAA	07
71 04 20 01	FL	201	07	6	G	99	99	1AAAA	0AAAAA	07
71 04 20 02	FL	202	07	2	G	99	99	1AAAA	1AAAAA	07
71 04 21 01	FL	202	04	1	G	12	48	1AAAA	1AAAAA	07

DISCHARGE YR-MO-DA-HR-MN	WATER STATE	ACCY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
71 04 22 11	SC	203	06	50	G	02	16	10000	00XFLO	07
71 04 24 01	FL	202	06	2	G	99	99	10000	100000	07
71 04 26 01	PP	203	07	150	G	11	99	10000	000000	07
71 04 27 01	FL	202	06	5	G	02	49	10000	000000	07
71 04 27 02	FL	202	07	5	G	99	99	10000	100000	07
71 04 28 12	SC	203	06	200	G	11	18	12000	100000	07
71 04 29 01	OA	202	07	210	G	03	44	02000	242532	07
71 04 29 01	FL	208	03	0		00	99	10000	000000	07
71 04 29 01	FL	201	06	10	G	99	99	10000	100000	07
71 04 30 01	FL	206	03	35	G	53	30	12000	400000	07
71 05 01 01	FL	203	07	16	G	99	99	00000	000000	07
71 05 03 01	FL	102	05	5	G	00	32	10000	000000	07
71 05 03 01	FL	203	07	4	G	06	15	12000	100000	07
71 05 04 01	FL	205	07	25	G	99	99	12000	000000	07
71 05 04 02	FL	203	11	14	G	99	99	00000	000000	07
71 05 06 01	PP	203	02	90	G	11	48	10000	000000	07
71 05 07 01	PP	203	02	0		14	48	10000	100000	07
71 05 10 02	FL	205	06	10	G	99	99	00000	000000	07
71 05 10 01	FL	203	07	106	G	[illegible]	[illegible]	[illegible]	100000	07
71 05 10 03	FL	201	06	5	G	07	05	10000	100000	07
71 05 11 02	FL	203	06	1	G	99	99	00000	000000	07
71 05 11 01	VT	203	07	40	G	99	99	10000	000000	07
71 05 11 01	FL	203	06	10	G	99	99	00000	000000	07
71 05 12 01	OA	202	09	1000	P	53	30	12000	400000	07
71 05 14 01	OA	206	06	8		99	99	00000	400000	07

DISCHARGE YR-MO-DA-HR	WATER STATE	ACUY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
71 05 14 13	CC	206	10	100	G	53	99	12?0R	400000	07
71 05 14 02	GA	202	07	5	G	99	99	00?00	000000	07
71 05 15 01	FL	203	06	5	G	06	31	10?00	100000	07
71 05 16 01	FL	102	05	50	G	09	99	10000	000000	07
71 05 17 02	FL	203	06	2	G	03	17	10000	100000	07
71 05 17 01	FL	202	07	30	G	54	17	12?00	400000	07
71 05 17 01	FL	203	06	2	G	04	46	10?00	100000	07
71 05 18 01	FL	202	07	55	G	10	40	12?00	400000	07
71 05 19 01	FL	203	06	2	G	99	99	00?00	000000	07
71 05 19 01	FL	203	06	200	G	54	16	12?00	400000	07
71 05 20 01	FL	203	07	2	G	99	99	00?00	000000	07
71 05 20 02	FL	203	07	10	G	99	99	00?00	000000	07
71 05 21 01	FL	202	07	25	G	10	40	10?00	400000	07
71 05 21 01	FL	203	01	10	G	01	49	10?00	100000	07
71 05 21 02	FL	203	06	2	G	99	99	00?00	000000	07
71 05 21 01	GA	202	07	200	G	02	44	00?00	ZYCH00	07
71 05 21 03	FL	203	08	30	G	99	99	12?00	100000	07
71 05 22 01	FL	205	06	10	G	99	99	00?00	000000	07
71 05 22 02	FL	206	06	3	G	99	99	00?00	000000	07
71 05 24 01	FL	203	07	10	G	99	99	10?00	000000	07
71 05 24 01	GA	202	03	250	G	11	16	00?00	100000	07
71 05 25 01	FL	203	06	10	G	02	49	12?00	000000	07
71 05 26 01	FL	203	06	5	G	53	99	00?00	000000	07
71 05 26 04	FL	201	06	3	G	99	99	00?00	000000	07
71 05 26 02	FL	203	06	10	G	99	99	10?00	000000	07

DISCHARGE YR-MO-DA-HH	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVOL.	DIST
71 05 26 04	FL	203	07	200	G	06	16	12?4R	000000	07
71 05 27 01	FL	201	06	10	G	99	99	00?00	000000	07
71 05 27 02	FL	203	06	8	G	99	99	00?00	000000	07
71 05 28 01	PR	203	03	10	G	99	99	10?00	000000	07
71 06 02 01	FL	203	06	2	G	02	99	00?00	P?TI00	07
71 06 04 01	FL	201	06	5	G	99	99	00?00	000000	07
71 06 05 01	FL	201	07	5	G	99	99	00?00	000000	07
71 06 05 04	FL	203	06	10	G	99	99	00?00	000000	07
71 06 05 02	FL	201	06	3	G	99	99	00?00	000000	07
71 06 05 03	FL	201	06	6	G	99	99	00000	000000	07
71 06 06 01	PR	203	02	5	G	14	53	10?00	100000	07
71 06 06 10	SC	206	10	10	G	50	99	10?00	000000	07
71 06 07 01	FL	203	06	5	G	99	99	00000	000000	07
71 06 08 01	FL	203	06	4	G	99	99	00?00	000000	07
71 06 09 02	FL	203	06	5	G	03	49	12?0?	PEWO	07
71 06 09 01	FL	203	06	3	G	03	16	10?00	OWEAJO	07
71 06 10 01	FL	203	06	10	G	06	01	[illegible]	000000	07
71 06 11 01	PR	203	03	0		51	46	10?00	100000	07
71 06 11 02	FL	303	06	3	G	99	99	00?00	000000	07
71 06 11 01	FL	201	06	10	G	99	99	00?00	000000	07
71 06 11 01	MA	202	10	15	G	51	62	02?0?	4?0000	07
71 06 12 01	VI	201	05	240000	G	03	02	12?4?	I?TT00	07
71 06 13 01	FL	208	05	0		00	99	10?00	000000	07
71 06 14 14	SC	206	02	100	G	53	99	12?0?	400000	07
71 06 15 01	FL	203	06	4	G	99	99	00?00	000000	07

DISCHARGE YR-MO-DA-HR	STATE	BODY CODE	MATERIAL	QUANTITY VOL/WAT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
71 06 18 01	PR	203	07	40	G	51	40	1ØXØØ	ØØØØØØ	07
71 06 19 01	FL	201	06	5	G	99	99	ØØXØØ	ØØØØØØ	07
71 06 19 02	FL	201	06	10	G	99	99	ØØXØØ	ØØØØØØ	07
71 06 21 02	FL	201	03	0		06	99	1ØXØØ	ØØØØØØ	07
71 06 21 01	FL	102	06	20	G	09	24	1ØØØX	GWYX00	07
71 06 21 02	FL	102	04	30	G	03	32	12XØX	HDYK00	07
71 06 22 01	FL	203	06	10	G	99	99	ØØXØØ	ØØØØØØ	07
71 06 22 01	FL	310	07	0		00	99	1ØXØX	ØØØØØØ	07
71 06 22 01	FL	203	07	25	G	99	99	ØØXØØ	ØØØØØØ	07
71 06 22 02	FL	201	06	10	G	99	99	ØØXØØ	ØØØØØØ	07
71 06 22 02	GC	400	07	0		56	08	12XØØ	1ØØØØØ	07
71 06 23 01	FL	203	04	6	G	99	99	ØØXØØ	ØØØØØØ	07
71 06 27 01	FL	203	06	3	G	06	21	12XØØ	ØØØØØØ	07
71 06 29 01	VI	203	06	40	G	51	44	1ØXØØ	1ØØØØØ	07
71 06 29 01	FL	203	07	35	G	03	46	1ØØØX	SRTI00	07
71 07 02 01	FL	201	06	3	G	99	99	ØØXØØ	ØØØØØØ	07
71 07 04 01	FL	203	07	100	G	02	51	12144	ZFJY00	07
71 07 04 01	FL	102	10	40	G	00	99	1ØXØØ	ØØØØØØ	07
71 07 06 01	FL	202	06	25	G	07	40	12XØ4	VAFV00	07
71 07 07 01	FL	203	06	1	G	06	46	ØØXØØ	ØØØØØØ	07
71 07 09 01	FL	103	06	15	G	42	18	12XØØ	ØØØØØØ	07
71 07 09 15	SC	206	10	50	G	50	99	1ØXØØ	4ØØØØØ	07
71 07 12 01	VI	203	07	1200	G	11	40	1ØXØØ	SLUG00	07
71 07 13 01	PR	203	06	1400	G	15	16	1ØXØØ	GSUN00	07
71 07 13 01	FL	102	03	0		02	99	1ØXØØ	ØØØØØØ	07

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DISCHARGE YR-MO-DA-HH	WATER BODY STATE	CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
71 07 14 01	VI	203	07	1000	G	12	14	10700	000000	07
71 07 14 01	FL	102	04	120	G	02	42	10000	000H00	07
71 07 14 01	FL	203	06	5	G	02	99	00000	LAVE00	07
71 07 14 01	FL	312	10	0		00	99	10700	000000	07
71 07 16 01	FL	103	08	5	G	09	51	00000	000000	07
71 07 16 01	FL	203	07	1500	G	03	44	12700	SLIX00	07
71 07 17 01	FL	202	10	40	G	02	40	12345	LIZW00	07
71 07 19 02	FL	203	06	10	G	03	49	00000	KEEP00	07
71 07 19 01	FL	201	06	3	G	99	99	00000	000000	07
71 07 20 01	FL	208	10	0		00	99	10000	000000	07
71 07 20 01	FL	103	08	0		00	45	00700	000000	07
71 07 21 01	FL	203	06	5	G	99	99	00000	000000	07
71 07 21 01	FL	206	01	0		00	99	10000	000000	07
71 07 21 17	SC	206	08	10	G	99	99	10000	000000	07
71 07 21 01	FL	203	04	200	G	02	40	12000	LAIW00	07
71 07 22 01	FL	205	10	4	G	00	99	10000	000000	07
71 07 22 10	SC	206	10	0	G	99	99	10700	000000	07
71 07 22 01	FL	201	07	15	G	99	99	10000	000000	07
71 07 23 01	VI	203	07	200	G	15	44	10700	000000	07
71 07 23 01	FL	208	10	0		01	99	10000	000000	07
71 07 23 01	FL	103	10	0		09	51	00000	000000	07
71 07 24 01	FL	203	06	10	G	02	49	12700	KEYW00	07
71 07 24 20	SC	206	08	0	G	99	99	10000	000000	07
71 07 24 01	PR	203	07	90	G	42	18	10000	100000	07
71 07 25 01	FL	203	07	10	G	02	99	12345	TAYL00	07

DISCHARGE YR-MO-DA-HR	WATER BODY STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
71 07 26 01	FL	102	01	8	G	34	44	1AAAA	AAAAAA	07
71 07 27 01	FL	201	06	3	G	99	99	AAAAA	AAAAAA	07
71 07 27 01	FL	103	06	25	G	42	18	1AAAA	AAAAAA	07
71 07 29 01	FL	205	11	1	G	99	99	AAAAA	AAAAAA	07
71 07 30 01	FL	203	07	3	G	99	99	AAAAA	AAAAAA	07
71 07 31 01	PA	203	07	40	G	12	99	1AAAA	AAAAAA	07
71 07 83 14	SC	208	13	0	G	99	99	1AAAA	AAAAAA	07
71 08 03 01	VI	203	06	40	G	14	99	1AAAA	ZAAKAA	07
71 08 04 01	FL	203	06	5	G	04	49	1PAAA	AAAAAA	07
71 08 05 01	PA	203	07	45	G	03	31	1P3AA	WAACAA	07
71 08 06 01	VI	203	07	800	G	12	99	1AAAA	AAAAAA	07
71 08 06 01	FL	201	07	10	G	99	99	AAAAA	AAAAAA	07
71 08 06 02	FL	203	06	3	G	99	99	AAAAA	AAAAAA	07
71 08 09 01	NA	202	07	30	G	99	99	AAAAA	AAAAAA	07
71 08 10 01	FL	203	06	2	G	04	99	AAAAA	AAAAAA	07
71 08 10 01	PA	203	02	5	G	12	48	1AAAA	1AAAAA	07
71 08 11 01	FL	203	06	10	G	04	44	1PAAA	ZPAA32	07
71 08 11 01	NA	202	07	75	G	53	34	0PAAE	4AAAAA	07
71 08 12 01	FL	201	07	10	G	99	99	AAAAA	AAAAAA	07
71 08 13 01	FL	205	06	3	G	99	99	AAAAA	AAAAAA	07
71 08 13 02	FL	203	06	10	G	99	99	AAAAA	AAAAAA	07
71 08 14 01	FL	201	06	20	G	99	99	1PAAA	AAAAAA	07
71 08 15 01	FL	306	10	0		00	99	1AAAE	AAAAAA	07
71 08 16 01	FL	203	06	2	G	99	99	AAAAA	AAAAAA	07
71 08 17 01	SC	203	10	0	G	99	99	1AAAA	AAAAAA	07

DISCHARGE YR-MO-DA-HHMM	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
71 08 18 01	VI	203	07	25	G	99	99	1A700	000000	07
71 08 18 01	FL	103	10	0		80	44	00A00	000000	07
71 08 19 01	FL	203	06	1	G	53	62	00000	000000	07
71 08 19 01	FL	103	06	0		42	18	00A00	000000	07
71 08 20 01	FL	203	06	2	G	99	99	00A00	000000	07
71 08 21 01	06	202	07	0		99	99	00A00	000000	07
71 08 23 01	FL	203	07	10	G	53	11	12500	000000	07
71 08 26 02	FL	203	06	40	G	04	17	12300	000000	07
71 08 26 01	FL	203	07	3	G	99	99	00500	000000	07
71 08 27 22	SC	206	10	0	G	99	99	1A000	000000	07
71 08 27 01	FL	203	07	30	G	03	16	12500	665J00	07
71 08 27 03	FL	203	07	70	G	03	32	12300	H4YU00	07
71 08 27 02	FL	203	06	5	G	25	49	00A00	000000	07
71 08 28 01	FL	103	07	0		99	99	00500	000000	07
71 08 30 01	06	202	06	2500	G	52	40	12500	400000	07
71 08 31 23	SC	206	10	0	G	53	46	12500	400000	07
71 09 01 01	FL	206	06	5	G	99	99	00500	000000	07
71 09 03 01	FL	203	06	3	G	99	99	00500	000000	07
71 09 04 01	FL	203	06	1	G	[illegible]	[illegible]	00A00	000000	07
71 09 05 01	FL	203	06	1	G	99	99	00500	000000	07
71 09 07 01	FL	201	06	10	G	99	99	00A00	000000	07
71 09 07 01	FL	203	07	2	G	03	40	1A500	JWYV00	07
71 09 08 01	06	202	06	25	G	02	43	00500	5Y6000	07
71 09 08 01	FL	203	06	2	G	99	99	00500	000000	07
71 09 09 02	FL	203	06	10	G	03	99	00A00	000000	07

DISCHARGE YR-MO-DAY-HR	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
71 09 09 01	FL	203	07	2	G	99	99	00000	000000	07
71 09 10 01	FL	203	06	10	G	06	42	00000	000000	07
71 09 11 01	FL	203	07	100	G	99	99	12000	000000	07
71 09 13 01	FL	203	07	100	G	02	52	12000	672000	07
71 09 13 01	VI	202	07	0		03	99	10000	000000	07
71 09 15 01	FL	203	06	5	G	99	99	00000	000000	07
71 09 16 01	FL	203	06	10	G	02	49	00000	000000	07
71 09 16 01	MA	202	06	20	G	07	41	00000	000000	07
71 09 16 01	PR	203	07	10	G	99	99	10000	100000	07
71 09 17 04	SC	207	03	500	G	53	99	12000	400000	07
71 09 19 01	SC	204	07	0		99	99	00000	000000	07
71 09 19 01	FL	203	01	700	G	41	18	12000	400000	07
71 09 19 01	FL	203	07	5	G	06	99	00000	000000	07
71 09 20 01	PR	203	05	200	G	13	46	12000	100000	07
71 09 20 02	FL	203	06	2	G	06	17	00000	000000	07
71 09 20 01	FL	203	07	3	G	06	16	00000	000000	07
71 09 21 01	VI	201	05	20	G	99	99	10000	000000	07
71 09 21 01	FL	203	06	10	G	99	99	00000	000000	07
71 09 23 01	VI	203	07	40	G	03	40	12000	010000	07
71 09 23 01	FL	203	06	10	G	99	99	00000	000000	07
71 09 23 01	FL	103	15	100	G	00	51	12000	000000	07
71 09 23 01	MA	202	07	0		99	99	00000	400000	07
71 09 24 02	FL	203	06	3	G	99	99	00000	000000	07
71 09 24 01	FL	203	06	5	G	99	99	00000	000000	07
71 09 28 01	FL	203	07	10	G	53	11	00000	000000	07

DISCHARGE YR-MO-DA-HH	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVNT.	DIST
71 09 29 01	FL	203	06	3	G	99	99	00000	000000	07
71 09 30 01	FL	203	07	20	G	03	10	12000	000000	07
71 10 2 02	FL	203	02	5	G	06	14	00700	000000	07
71 10 02 01	FL	203	06	3	G	99	99	00000	000000	07
71 10 03 01	OA	202	07	15	G	50	41	00000	000000	07
71 10 04 01	FL	203	06	10	G	99	99	00000	000000	07
71 10 07 01	PR	203	04	4000	G	17	18	10000	000000	07
71 10 10 01	FL	203	07	10	G	99	99	00000	000000	07
71 10 10 02	FL	203	07	50	G	99	99	12000	000000	07
71 10 10 01	OA	202	07	80	G	03	30	00000	000000	07
71 10 11 01	FL	203	06	5	G	99	99	00000	000000	07
71 10 14 01	OA	202	11	0		99	99	00000	000000	07
71 10 14 01	FL	202	10	10	G	02	51	10000	PEXTOO	07
71 10 14 01	FL	203	06	50	G	99	99	12000	000000	07
71 10 18 01	PR	203	06	50	G	06	44	10700	000000	07
71 10 19 01	PR	203	07	200	G	99	99	10000	000000	07
71 10 19 01	FL	203	06	1	G	99	99	00000	000000	07
71 10 19 01	FL	202	07	50	G	06	23	12000	240861	07
71 10 20 01	FL	102	03	3	G	[illegible]	[illegible]	[illegible]	[illegible]	07
71 10 20 01	PR	203	05	5	G	99	99	12000	000000	07
71 10 22 01	FL	306	10	0		02	51	00000	000000	07
71 10 27 01	FL	201	07	10	G	99	99	00000	000000	07
71 10 27 01	OA	202	07	100	G	03	16	00000	ELEW00	07
71 10 29 01	FL	202	07	15	G	99	99	00000	000000	07
71 10 30 01	FL	201	06	5	G	99	99	00000	000000	07

DISCHARGE YR-MO-DA HR-MIN	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
71 10 30 01	FL	202	07	75	G	06	02	12****	1**950	07
71 10 31 01	FL	203	06	150	G	04	53	12****	C00000	07
71 11 01 01	00	202	06	0		99	99	00000	400000	07
71 11 02 01	FL	203	06	5	G	99	99	00000	000000	07
71 11 02 01	00	203	07	100	G	17	62	10**0	000000	07
71 11 04 01	VT	203	05	80	G	11	43	10**0	100000	07
71 11 05 01	FL	201	06	3	G	99	99	00000	000000	07
71 11 07 24	00	206	10	0	G	11	99	10**0	000000	07
71 11 08 01	FL	203	06	5	G	99	99	00000	000000	07
71 11 11 01	FL	202	07	35	G	41	46	12**0	400000	07
71 11 13 01	FL	203	06	3	G	99	99	00000	000000	07
71 11 15 01	VT	203	05	20	G	03	31	10**0	HPV100	07
71 11 16 01	FL	203	07	150	G	03	41	12**0	JWAP00	07
71 11 16 01	FL	203	06	4	G	99	99	10**0	000000	07
71 11 18 01	VT	203	04	5	G	11	44	10**0	100000	07
71 11 19 02	VT	203	05	10	G	99	99	10**0	100000	07
71 11 19 01	00	203	05	50	G	03	99	10**0	000000	07
71 11 21 01	00	203	07	120	G	15	99	12**0	100000	07
71 11 23 01	FL	203	06	2	G	99	99	00000	000000	07
71 11 24 01	FL	201	06	3	G	99	99	00000	000000	07
71 11 24 02	FL	201	07	2	G	99	99	00000	000000	07
71 11 27 01	VT	203	07	20	G	15	31	12**0	07W500	07
71 11 27 01	FL	204	06	3	G	99	99	00000	000000	07
71 11 30 01	00	202	07	10	G	50	23	10**0	400000	07
71 11 30 01	00	203	07	20	G	99	99	10**0	000000	07

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DISCHARGE YR-MO-DA-TM	STATE	COUNTY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
71 12 01 01	FL	202	06	5	G	99	99	12???	000000	07
71 12 03 01	FL	201	07	10	G	99	99	12?0?	000000	07
71 12 03 01	FL	206	08	1	G	00	40	0?0??	??4?80	07
71 12 03 01	FL	201	06	5	G	99	99	0?0??	000000	07
71 12 03 01	OA	206	06	0		00	99	0?0??	400000	07
71 12 04 02	PR	203	07	20	G	03	40	1?0??	000000	07
71 12 04 01	PR	203	05	400	G	03	14	1????	000000	07
71 12 05 01	PR	203	07	45	G	15	16	1????	100000	07
71 12 05 01	FL	203	06	5	G	99	99	0?0??	000000	07
71 12 06 01	FL	202	07	50	G	07	52	1?0??	5?1?00	07
71 12 06 01	FL	206	08	15	G	10	30	0?0??	400000	07
71 12 07 01	FL	203	06	5	G	06	49	1?0??	000000	07
71 12 07 01	VI	203	07	85	G	10	00	1????	000000	07
71 12 09 01	FL	201	02	2000	G	25	43	12???	000000	07
71 12 11 01	PR	203	07	100	G	99	99	1?0??	000000	07
71 12 13 01	VI	203	07	40	G	15	16	12?0?	100000	07
71 12 14 01	FL	103	06	12	G	07	41	12?0?	0?1000	07
71 12 15 01	FL	203	06	1	G	99	99	0?0??	000000	07
71 12 16 01	FL	203	06	10	G	[illegible]	[illegible]	[illegible]	?2?1?0	07
71 12 17 01	PR	208	07	850	G	99	99	1????	000000	07
71 12 18 01	VI	203	07	65	G	11	46	12?0?	1?0000	07
71 12 20 01	FL	203	07	40	G	99	99	12?0?	000000	07
71 12 20 01	FL	103	08	2	G	12	44	12?0?	000000	07
71 12 20 02	FL	203	06	1	G	02	17	1????	E1?100	07
71 12 20 01	PR	202	07	400	G	99	99	12?0?	000000	07

DISCHARGE YR-MO-DA-HH	WATER STATE	RCVY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
71 12 21 01	FL	203	06	1	G	99	99	00000	000000	07
71 12 21 02	FL	201	06	5	G	99	99	00000	000000	07
71 12 23 01	PR	203	07	45	G	11	00	12700	100000	07
71 12 23 01	FL	203	06	20	G	99	99	10000	000000	07
71 12 25 02	VI	203	07	600	G	03	40	12700	SHSK30	07
71 12 27 01	FL	203	06	2	G	99	99	00000	000000	07
71 12 27 02	FL	201	06	4	G	99	99	00000	000000	07
71 12 30 01	FL	201	07	200	G	03	23	12700	HAVU00	07
71 12 31 01	PR	203	07	50	G	11	48	10000	100000	07
71 12 31 01	GA	203	07	1	G	50	40	00300	400000	07
TOTAL THIS YEAR				71				410 RECORDS	274912 gals	
72 01 03 01	FL	201	07	40	G	53	99	10000	400000	07
72 01 04 02	FL	201	04	0	G	02	35	10000	ELAF00	07
72 01 04 01	FL	203	04	10	G	02	48	10000	WXAR94	07
72 01 04 03	FL	201	07	0		99	99	10000	000000	07
72 01 05 02	FL	310	10	0		02	52	00000	SWET00	07
72 01 05 01	GA	206	07	0		13	99	00000	100000	07
72 01 06 27	SC	206	10	0	G	99	99	10300	000000	07
72 01 07 01	FL	203	06	10	G	02	48	00000	000000	07
72 01 11 01	FL	203	07	5	G	13	57	00000	100000	07
72 01 11 02	FL	203	07	20	G	02	44	10000	000000	07
72 01 12 01	PR	203	06	30	G	09	44	10000	NAZ100	07
72 01 13 28	SC	206	10	30	G	02	32	10000	LOAY00	07
72 01 14 01	FL	203	07	40	G	02	99	12700	AILP00	07

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DISCHARGE YR-MO-DA-HR	WATER BODY STATE CODE		MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 01 16 03	FL	203	07	30	G	99	99	000000	000000	07
72 01 16 01	FL	303	07	0		99	99	000000	000000	07
72 01 16 02	GA	203	07	20	G	99	99	000000	000000	07
72 01 17 01	FL	206	07	150	G	03	13	100000	EIXN00	07
72 01 18 01	FL	203	08	5	G	04	41	100000	574875	07
72 01 19 01	PR	202	07	2	G	99	99	000000	000000	07
72 01 20 02	FL	203	04	15	G	04	44	100000	274095	07
72 01 20 03	GA	206	07	200	G	13	31	100000	100000	07
72 01 20 01	FL	203	10	20	G	03	46	100000	HOVL00	07
72 01 21 01	FL	203	04	40	G	04	13	100000	240591	07
72 01 22 01	FL	203	04	5	G	99	99	000000	000000	07
72 01 24 01	FL	205	07	0	G	03	05	100000	SV4V00	07
72 01 25 01	FL	415	04	0		02	51	000000	SVJV00	07
72 01 26 01	FL	205	10	2	G	13	62	100000	400000	07
72 01 27 02	FL	202	10	5	G	99	62	100000	000000	07
72 01 27 04	FL	203	06	25	G	02	41	120000	V00500	07
72 01 27 05	FL	202	10	10	G	99	99	000000	000000	07
72 01 27 03	FL	202	10	5	G	99	A2	100000	000000	07
72 01 28 24	SC	203	04	10	G	09	17	120000	000000	07
72 01 29 03	PR	202	01	94000	G	53	46	100000	000000	07
72 01 29 01	FL	203	07	1	G	03	00	100000	PFJH00	07
72 01 29 02	FL	203	07	1	G	03	00	120000	PFJH00	07
72 01 31 04	SC	206	04	20	G	09	01	100000	000000	07
72 01 31 01	SC	202	04	8	G	09	07	000000	H00300	07
72 02 02 02	PR	202	04	400	G	53	99	100000	000000	07

DISCHARGE YR-MO-DA-HR	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVNT.	DIST
72 02 07 04	GA	202	04	30	G	99	99	0AA0A	000000	07
72 02 07 04	FL	203	08	2	G	53	12	12?0A	100000	07
72 02 02 04	FL	203	07	25	G	99	99	12?4A	000000	07
72 02 07 11	FL	203	10	2	G	99	42	10000	0A0000	07
72 02 04 01	GA	203	02	3800	G	52	46	12?0A	100000	07
72 02 05 01	FL	203	07	2	G	99	99	10000	000000	07
72 02 05 02	PR	203	01	50	G	99	99	10A0A	000000	07
72 02 05 03	PR	203	04	0	G	11	18	10000	100000	07
72 02 06 01	PR	202	07	840	G	99	99	10A0A	0A0000	07
72 02 07 01	FL	203	07	75	G	50	99	10?0A	4A0000	07
72 02 08 02	GA	202	04	20	G	99	99	0A0A0	000000	07
72 02 08 01	FL	203	10	15	G	20	57	10A0A	200000	07
72 02 09 02	PR	202	07	840	G	53	19	10A0A	100000	07
72 02 09 01	FL	202	06	35	G	06	51	10A0A	52AR26	07
72 02 11 01	FL	203	06	0		04	40	0AA0A	2?4504	07
72 02 11 03	FL	203	05	10	G	25	99	0AA0A	100000	07
72 02 11 02	FL	203	07	2	G	02	41	10A0A	0FKM00	07
72 02 14 01	PR	203	07	50	G	99	99	10000	000000	07
72 02 15 01	VI	204	07	20	G	[redacted]			000000	07
72 02 15 02	PR	203	07	5	G	11	99	10000	000000	07
72 02 15 03	FL	423	07	100	G	99	99	10?0A	000000	07
72 02 16 03	FL	202	10	10	G	99	99	12A0A	000000	07
72 02 16 02	FL	205	04	400	G	25	06	10000	400000	07
72 02 16 01	FL	202	10	100	G	02	52	10A0A	0ACH00	07
72 02 20 03	VI	202	07	100	G	03	44	10A0A	SFYN00	07

DISCHARGE YR-MO-DA-HR	STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
72 02 20 02	FL	205	07	0	G	02	05	1AAAA	JWW000	07
72 02 20 01	FL	307	04	0	G	04	00	1AAAA	SSAA3A	07
72 02 21 01	VI	202	07	25	G	03	46	1AAAA	LAYC00	07
72 02 22 04	VI	203	07	50	G	03	99	1AAAA	SWTY00	07
72 02 22 02	FL	203	08	5	G	07	40	1AAAA	298594	07
72 02 22 01	FL	202	04	30	G	99	99	0AAAA	0AA000	07
72 02 23 01	FL	418	11	4065	G	00	99	1AIAA	MFC617	07
72 02 24 02	FL	202	06	10	G	02	49	1AIAA	MBQM00	07
72 02 24 01	FL	202	0A	10	G	99	99	1AAAA	0AA000	07
72 02 28 01	FL	202	07	5	G	0A	48	1AIAA	174019	07
72 02 29 02	FL	201	04	10	G	99	99	1AAAA	0AA000	07
72 02 29 01	SC	107	02	500	G	25	99	1AAAA	0AA000	07
72 03 01 01	FL	201	06	0	G	04	05	1AAAA	533413	07
72 03 02 02	FL	203	11	10	G	06	16	1AAAA	298771	07
72 03 02 01	PR	203	08	40	G	99	99	1AAAA	0AA000	07
72 03 03 01	FL	203	10	200	G	03	44	1AIAA	MBMP00	07
72 03 06 02	FL	201	10	10	G	07	51	0AAAA	538441	07
72 03 07 01	FL	103	07	15	G	99	99	1AAAA	0AA000	07
72 03 09 01	FL	202	03	40	G	01	23	0AIAA	3F0N00	07
72 03 10 01	VI	201	08	50	G	0A	03	1AAAA	0AA000	07
72 03 11 01	PR	203	07	0		99	99	1AAAA	0AA000	07
72 03 14 01	FL	203	07	5	G	09	17	0AIAA	0A7A30	07
72 03 14 02	FL	202	04	30	G	03	31	1AIAA	2AA400	07
72 03 14 03	FL	202	07	10	G	06	47	1AAAA	204145	07
72 03 17 01	PR	203	04	8	G	11	48	1AIAA	1AA000	07

DISCHARGE YR-MO-LA-HM	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 03 18 01	VI	203	04	50	G	11	44	1AAAA	1AAAAA	07
72 03 20 01	FL	203	07	20	G	0A	45	0AAAA	2AA481	07
72 03 21 04	PR	203	07	45	G	11	48	1AAAA	6?UNDO	07
72 03 21 02	FL	203	0A	3	G	07	45	1AAAA	P.AAAAA	07
72 03 21 03	VI	203	07	45	G	01	99	1AAAA	0AAAAA	07
72 03 21 01	PR	203	04	7	G	00	15	1AAAA	1AAAAA	07
72 03 22 01	PR	203	07	30	G	06	11	1AAAA	5?1135	07
72 03 22 02	FI	206	10	1	G	05	03	1AAAA	0AAAAA	07
72 03 23 01	PR	205	07	8		99	99	1AAAA	0AAAAA	07
72 03 25 03	PR	203	04	3	G	04	99	1AAAA	5?919R	07
72 03 25 01	FL	202	06	10	G	0A	51	1AAAA	WWA915	07
72 03 25 02	GA	202	0A	1	G	13	40	0AAAA	1AAAAA	07
72 03 26 02	PR	203	07	100	G	11	44	1AAAA	1AAAAA	07
72 03 26 01	FL	205	04	5	G	99	99	1AAAA	0AAAAA	07
72 03 28 03	PR	203	07	850	G	06	48	1AAAA	1AAAAA	07
72 03 28 04	PR	203	0A	10	G	99	53	1AAAA	0AAAAA	07
72 03 28 01	FL	103	10	10	G	0A	51	1AAAA	WV2328	07
72 03 28 02	FL	102	06	8	G	99	99	0AAAA	0AAAAA	07
72 03 29 01	PR	203	07	50	G	[illegible]	[illegible]	[illegible]	0AAAAA	07
72 03 30 02	FL	306	11	0		99	99	1AAAA	0AAAAA	07
72 04 01 01	FL	201	06	10	G	99	99	1AAAA	0AAAAA	07
72 04 02 01	FL	203	07	50	G	99	99	1AAAA	0AAAAA	07
72 04 03 02	FL	203	11	50	G	07	46	1AAAA	5?4910	07
72 04 03 01	FL	202	07	50	G	04	47	0AAAA	0AAAAA	07
72 04 05 02	GA	206	0A	50	G	99	99	1AAAA	0AAAAA	07

DISCHARGE JURISDICTION	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WAT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 04 05 01	FL	203	04	10	0	03	46	1[illegible]	KWIX39	07
72 04 09 01	VI	201	07	100	0	17	99	1[illegible]	000000	07
72 04 10 01	FL	204	07	15	0	99	99	1[illegible]	[illegible]	07
72 04 11 01	PO	201	07	200	0	99	99	1[illegible]	000000	07
72 04 11 04	AA	202	07	80	0	03	31	0[illegible]	EIJL00	07
72 04 11 03	AA	202	07	50	0	99	99	1[illegible]	[illegible]	07
72 04 11 02	FL	203	08	1	0	99	99	1[illegible]	000000	07
72 04 12 01	VI	203	07	300	0	03	48	1[illegible]	IPNT00	07
72 04 12 02	FL	204	10	3	0	99	99	1[illegible]	000000	07
72 04 14 01	FL	201	07	3	0	99	99	1[illegible]	000000	07
72 04 17 01	FL	202	07	40	0	03	99	0[illegible]	BRAT00	07
72 04 17 02	FL	203	04	2	0	03	45	1[illegible]	PNCT00	07
72 04 18 01	FL	102	11	50	0	08	99	12[illegible]	000000	07
72 04 18 02	FL	206	07	5	0	00	48	0[illegible]	WA9568	07
72 04 19 01	FL	103	04	30	0	03	10	12[illegible]	3A2625	07
72 04 19 02	FL	103	08	2	0	03	31	12[illegible]	3A2625	07
72 04 20 01	FL	208	04	0		99	99	1[illegible]	000000	07
72 04 20 02	FL	309	07	0		99	99	1[illegible]	000000	07
72 04 21 01	FL	206	07	5	0	04	31	0[illegible]	SA3567	07
72 04 21 03	FL	203	08	1	0	11	40	1[illegible]	000000	07
72 04 21 02	FL	202	04	2	0	99	99	1[illegible]	000000	07
72 04 22 01	FL	203	01	5	0	03	18	1[illegible]	KWKH00	07
72 04 24 01	FL	202	10	25	0	99	99	1[illegible]	[illegible]	07
72 04 25 01	FL	203	08	1	0	99	62	1[illegible]	000000	07
72 04 26 01	FL	106	06	35	0	99	99	12[illegible]	000000	07

DISCHARGE YR-MO-DA-IN	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 04 27 01	PR	203	07	5	G	03	48	1AA0A	100000	07
72 04 28 02	PR	203	07	200	G	02	46	1AA0A	KA0000	07
72 04 28 01	FL	203	10	15	G	99	99	12A0A	000000	07
72 05 01 01	FL	203	07	20	G	11	16	12A0A	1A0000	07
72 05 01 02	FL	203	07	50	G	12	10	12A0A	3A0000	07
72 05 02 01	VI	203	07	85	G	07	17	1AA0A	ATFB00	07
72 05 03 01	FL	202	02	250	G	99	99	0AA0A	000000	07
72 05 05 01	PR	203	08	60	G	99	99	1AA0A	000000	07
72 05 06 01	PR	204	07	0	G	99	99	1AA0A	000000	07
72 05 06 02	SC	203	07	40	G	02	46	0AA0A	JXNN00	07
72 05 07 01	FL	203	07	5	G	06	40	1AA0A	174019	07
72 05 08 02	SC	104	10	10	G	99	99	0AA0A	000000	07
72 05 08 03	SC	106	07	10	G	09	99	1AA0A	000000	07
72 05 08 01	FL	203	08	3	G	99	99	1AA0A	000000	07
72 05 09 01	FL	203	07	10	G	02	49	1AA0A	DW4S00	07
72 05 09 03	FL	203	07	20	G	03	40	1AA0A	SUZE00	07
72 05 09 02	FL	201	10	5	G	99	99	1AA0A	000000	07
72 05 10 01	GA	206	06	20	G	06	44	1AA0A	HT1B50	07
72 05 12 01	SC	203	07	100	G	12	15	1AA0A	4A0000	07
72 05 13 02	SC	104	07	9	G	99	99	1AA0A	000000	07
72 05 13 01	FL	106	04	10	G	02	46	0AA0A	07UN00	07
72 05 14 02	VI	415	07	0	G	03	51	1AA0A	000000	07
72 05 15 02	FL	203	10	10	G	99	99	1AA0A	000000	07
72 05 15 01	GA	202	07	40	G	06	46	12A0A	0A0000	07
72 05 16 01	VI	203	07	45	G	03	45	1AA0A	FLV500	07

DISCHARGE YR-MO-DA-HR-MN	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 05 17 01	FL	203	03	4	G	99	99	00000	000000	07
72 05 18 02	VT	203	08	20	G	99	51	10000	000000	07
72 05 18 04	PA	203	08	125	G	41	99	10000	100000	07
72 05 18 03	FL	203	06	10	G	04	46	10000	244958	07
72 05 20 01	FL	203	06	10	G	99	99	10000	000000	07
72 05 21 02	VT	202	05	2500	G	06	15	10000	000000	07
72 05 21 01	FL	203	07	10	G	99	99	10000	000000	07
72 05 22 02	SC	206	10	40	G	99	99	12900	000000	07
72 05 23 01	FL	203	02	18	G	04	52	00000	WG7470	07
72 05 24 01	PA	204	07	10	G	99	99	10000	000000	07
72 05 24 02	VT	204	07	0	G	99	99	10000	000000	07
72 05 26 02	FL	205	10	10	G	99	99	12000	000000	07
72 05 26 01	FL	202	10	3	G	99	99	10000	000000	07
72 05 26 04	FL	203	07	2	G	07	51	10000	LP0800	07
72 05 26 03	FL	203	07	1	G	03	48	10000	244006	07
72 05 27 01	SC	203	04	50	G	02	45	[illegible]	000000	07
72 05 27 03	FL	206	09	770	G	53	18	10345	400000	07
72 05 27 02	FL	203	07	5	G	06	46	10000	174019	07
72 05 29 01	PA	202	07	1	G	99	99	10000	000000	07
72 05 29 02	PA	204	07	0	G	99	99	10000	000000	07
72 05 29 03	PA	203	07	800	G	03	44	12900	EL0J00	07
72 05 30 02	FL	201	07	5	G	02	52	10000	SX4T00	07
72 05 30 01	AA	203	06	50	G	27	01	00000	000000	07
72 05 31 01	SC	203	10	10	G	99	99	00000	000000	07
72 05 31 02	AA	203	07	4	G	11	17	02900	100000	07

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DISCHARGE YR-MO-DA-HH	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 05 31 03	FL	202	09	90	G	11	24	000000	100000	07
72 06 01 11	FL	202	07	0		99	99	000000	000000	07
72 06 01 02	FL	203	04	2	G	99	99	100000	000000	07
72 06 01 04	FL	102	07	40	G	99	99	100000	000000	07
72 06 02 03	FL	203	04	15	G	00	99	000000	000000	07
72 06 02 02	FL	201	06	10	G	99	99	123000	000000	07
72 06 05 03	PO	203	07	2	G	51	62	100000	100000	07
72 06 05 01	FL	202	07	500	G	02	03	123000	67XW	07
72 06 05 02	FL	205	04	1	G	99	99	100000	000000	07
72 06 06 01	FL	202	07	15	G	02	03	123000	67XW	07
72 06 07 01	GA	202	02	0		11	19	123456	100000	07
72 06 07 02	FL	202	07	10	G	02	03	123000	67XW	07
72 06 07 04	FL	430	10	0		99	99	100000	000000	07
72 06 07 03	FL	202	07	5	G	03	46	123000	ELSI	07
72 06 08 01	FL	202	07	25	G	02	03	123000	67XW	07
72 06 08 03	FL	202	07	50	G	02	03	123000	67XW	07
72 06 08 04	FL	201	06	7	G	99	99	100000	000000	07
72 06 09 02	PO	203	07	75	G	41	18	100000	000000	07
72 06 09 03	PO	203	08	20	G	99	99	100000	000000	07
72 06 09 01	VT	203	07	800	G	03	46	100000	KLHC	07
72 06 09 04	FL	202	07	100	G	02	03	123000	67XW	07
72 06 10 02	FL	105	10	7	G	80	52	100000	400000	07
72 06 10 03	FL	201	11	5	G	99	99	100000	000000	07
72 06 12 01	PO	203	07	50	G	11	53	100000	100000	07
72 06 12 03	PO	203	08	1	G	11	17	100000	100000	07

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DISCHARGE YR-MO-DA-HM	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 06 12 02	FL	201	05	2	G	99	99	QQQQQ	QQQQQQ	07
72 06 13 01	PR	103	04	150	G	03	41	12?QQ	KJQN	07
72 06 13 02	FL	202	07	50	G	02	03	12?QQ	67XW	07
72 06 14 01	FL	201	02	300	G	34	99	1?QQQ	QQQQQQ	07
72 06 14 02	FL	203	04	28	G	25	40	QQQQQ	QQQQQQ	07
72 06 15 01	FL	202	07	20	G	02	03	12?QQ	67XW	07
72 06 15 01	FL	202	07	50	G	02	03	12?QQ	67XW	07
72 06 18 01	SC	206	04	500	G	99	44	12???	OPER	07
72 06 19 01	FL	203	06	2000	G	52	63	1?QQQ	1QQQQQ	07
72 06 20 03	GA	206	06	0		53	62	1?QQQ	4QQQQQ	07
72 06 20 01	FL	202	05	1	G	02	40	QQQQQ	QQQQQQ	07
72 06 20 02	FL	203	06	5	G	02	47	1?QQQ	4?5725	07
72 06 21 01	FL	203	06	10	G	02	99	1?QQQ	P?PQ	07
72 06 22 01	FL	203	04	5	G	99	99	QQQQQ	QQQQQQ	07
72 06 22 02	AA	203	07	10	G	03	99	12?QQ	SVLY	07
72 06 23 01	SC	203	04	3	G	16	18	1?QQQ	4QQQQQ	07
72 06 23 02	FL	203	06	3	G	06	48	1?QQQ	1QQQQQ	07
72 06 23 04	SC	205	07	100	G	41	19	12???	1QQQQQ	07
72 06 23 03	FL	203	06	1	G	25	24	12???	1QQQQQ	07
72 06 24 03	PR	203	07	30	G	02	44	12???	S?XP	07
72 06 24 01	AA	202	08	2	G	99	99	QQQQQ	QQQQQQ	07
72 06 24 02	FL	203	07	1	G	16	24	1?QQQ	2?7176	07
72 06 29 03	PR	203	07	50	G	03	46	12???	1QQQQQ	07
72 06 29 02	AA	103	07	250	G	53	47	1?QQQ	4QQQQQ	07
72 07 02 01	FL	203	07	5	G	06	18	1?QQQ	1QQQQQ	07

DISCHARGE YR-MO-DA-HH	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 07 15 01	FL	203	10	6	G	02	51	1AAAA	IMILOO	07
72 07 06 05	PP	203	08	35	G	00	51	1AAAA	522549	07
72 07 06 03	SC	203	10	10	G	99	99	0AAAA	000000	07
72 07 06 02	FL	208	11	0		99	99	1AAAA	000000	07
72 07 07 02	PP	203	07	20	G	99	99	1AAAA	100000	07
72 07 07 01	PP	203	07	25	G	99	99	1AAAA	100000	07
72 07 07 03	FL	206	04	0		02	11	12AAA	000000	07
72 07 07 05	FL	203	07	1	G	04	16	1AAAA	204145	07
72 07 07 04	FL	201	07	250	G	25	03	1AAAA	000000	07
72 07 08 01	FC	500	11	0		99	99	1AAAA	000000	07
72 07 09 01	VI	203	07	85	G	03	40	12AAA	000000	07
72 07 10 01	FL	202	05	10	G	01	15	0AAAA	EL0Y00	07
72 07 11 03	PP	203	07	20	G	53	15	12AAA	000000	07
72 07 11 01	FL	203	06	20	G	02	45	1AAAA	PJJH00	07
72 07 11 02	FL	205	08	30	G	08	51	12AAA	FL179A	07
72 07 12 05	FL	203	06	150	G	04	34	12AAA	554427	07
72 07 12 04	SC	203	06	10	G	99	99	0AAAA	000000	07
72 07 12 04	FL	106	04	20	G	99	99	1AAAA	000000	07
72 07 12 01	PP	203	03	40	G	11	32	1AAAA	100000	07
72 07 12 02	FC	425	11	0		99	99	0AAAA	000000	07
72 07 12 03	FC	425	11	0		99	99	1AAAA	000000	07
72 07 13 01	SC	203	02	5	G	99	99	0AAAA	000000	07
72 07 13 02	PP	203	04	1	G	11	48	1AAAA	100000	07
72 07 14 01	GA	206	07	20	G	53	40	12AAA	400L00	07
72 07 17 03	PP	203	08	1	G	11	31	1AAAA	100000	07

DISCHARGE YR-NO-DATION	WATER STATE	RCVY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESERVE	VESSEL INVNT.	DIST
72 07 17 02	GA	202	07	5	G	02	23	02?0	SWTUJO	07
72 07 17 01	FL	203	07	10	G	08	22	12?08	17A019	07
72 07 18 01	GA	202	09	70	G	50	40	02?0A	1A0000	07
72 07 20 02	SC	103	02	400	G	32	17	1?44A	1A0000	07
72 07 20 01	FL	107	02	20	G	30	31	12A0A	040000	07
72 07 21 01	PR	203	07	35	G	99	99	1A0A0	000000	07
72 07 22 01	FL	203	11	0		99	99	1A0A0	0A0000	07
72 07 23 02	FL	203	07	70	G	53	40	12?0A	4A0000	07
72 07 23 01	FL	203	02	0		11	16	00?0A	1A0000	07
72 07 24 01	SC	206	10	5	G	99	99	1A0A0	000000	07
72 07 24 01	FL	205	04	150	G	50	57	12?0A	4A0000	07
72 07 25 02	FL	203	07	10	G	04	51	1A?0A	PM42R4	07
72 07 26 01	FL	203	07	30	G	02	51	1A?0A	DPH100	07
72 07 28 01	FL	203	07	10	G	02	52	1A?0A	ELPC00	07
72 07 29 01	FL	208	06	5	G	00	99	1A0A0	000000	07
72 07 30 01	FL	202	04	100	G	03	42	0A?00	W.LP00	07
72 08 01 01	VI	203	06	40	G	11	47	12?0A	1A0000	07
72 08 03 01	FL	202	06	15	G	08	46	00?0A	NAP003	07
72 08 03 02	FL	203	07	75	G	99	99	12?0A	040000	07
72 08 05 02	FL	204	07	5	G	03	31	0A?00	HP0S00	07
72 08 05 01	FL	202	07	30	G	03	31	02?0A	HP0S00	07
72 08 06 01	FL	206	04	10	G	99	99	0A?0A	0A0000	07
72 08 V7 02	FL	203	04	1	G	99	99	1A?00	040000	07
72 08 07 01	VI	203	06	40	G	11	32	12?0A	1A0000	07
72 08 08 01	SC	203	07	100	G	02	45	1244A	3P0J00	07

DISCHARGE YR-MO-DA-HR	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 08 08 04	FL	206	06	1[illegible]	G	99	99	000000	000000	07
72 08 08 03	FL	202	07	5	G	03	10	07[illegible]05	SUEZ00	07
72 08 11 01	FL	203	06	1000	G	04	07	12[illegible]05	291968	07
72 08 11 02	PO	203	07	100	G	11	40	12[illegible]04	100000	07
72 08 12 01	GA	206	07	10	G	06	47	10[illegible]05	240061	07
72 08 12 02	FL	203	07	150	G	03	45	12[illegible]05	HOKP00	07
72 08 14 01	GA	202	07	15	G	06	44	12[illegible]05	SAP305	07
72 08 15 02	PO	203	04	300	G	03	41	12[illegible]04	KPAL00	07
72 08 15 01	FL	203	06	1	G	99	99	10[illegible]00	000000	07
72 08 16 02	FL	203	04	10	G	99	99	10[illegible]00	000000	07
72 08 16 01	FL	203	08	20	G	99	99	12[illegible]04	000000	07
72 08 17 01	FL	203	11	25	G	03	47	10[illegible]04	WILP00	07
72 08 17 03	VI	305	07	0		03	52	10[illegible]00	FORR00	07
72 08 17 02	GA	202	08	1	G	02	16	00[illegible]00	SYNF00	07
72 08 18 01	PO	202	04	3	G	99	99	10[illegible]00	000000	07
72 08 20 01	FL	203	02	10	G	99	99	00[illegible]00	000000	07
72 08 21 01	PO	203	07	0		99	99	10[illegible]00	000000	07
72 08 21 02	GA	202	02	15	G	2A	06	00[illegible]00	400000	07
72 08 21 03	GA	206	10	5	G	07	51	00[illegible]05	2EA736	07
72 08 21 04	FL	203	10	5	G	99	99	10[illegible]00	000000	07
72 08 22 01	FL	202	02	25	G	40	62	07[illegible]00	000000	07
72 08 23 02	SC	206	02	0		12	17	10[illegible]05	480000	07
72 08 26 01	FL	203	07	10	G	99	99	10[illegible]00	000000	07
72 08 28 04	FL	203	04	15	G	08	51	12[illegible]04	279824	07
72 08 28 03	VI	202	06	50	G	99	99	10[illegible]00	000000	07

DISCHARGE YR-MO-DA-HR	STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 08 28 02	VT	203	03	25	G	03	46	12?0A	L4YC00	07
72 08 28 01	FL	202	02	15	G	50	99	0?70A	0A0000	07
72 08 29 01	FL	205	10	1	G	99	99	1A?0A	0AGC?0	07
72 08 30 02	FL	201	06	1	G	99	99	0A?0A	0A0000	07
72 08 30 01	FL	202	02	50	G	41	19	0?A0A	000000	07
72 08 30 01	FL	205	06	5	G	99	99	1A?0A	0A0000	07
72 08 31 01	VT	203	07	20	G	03	49	12?0A	EDRR00	07
72 08 31 02	04	202	03	0		11	24	0A?0A	100000	07
72 08 31 03	FL	203	04	5	G	99	99	12A0A	0A0000	07
72 09 04 01	FL	203	10	10	G	99	99	1A?0A	000000	07
72 09 05 02	PR	201	02	0		03	50	1A?0A	JYKI00	07
72 09 05 01	FL	208	11	0		99	99	0A?0A	0A0000	07
72 09 05 04	FL	202	06	25	G	00	44	1A?0A	4A0000	07
72 09 05 03	FL	202	07	100	G	03	19	1A?0A	5WLN00	07
72 09 07 02	FL	203	08	50	G	04	07	12?0A	5?1015	07
72 09 07 03	FL	202	10	25	G	02	99	0A?0A	HOJX00	07
72 09 07 01	VT	203	07	85	G	03	44	12?0A	I0AC00	07
72 09 08 01	VT	202	07	10	G	99	99	1A?0A	000000	07
72 09 09 02	FL	203	07	40	G	06	46	12?0A	5?5140	07
72 09 09 01	FL	203	07	3	G	03	17	12?0A	6A4000	07
72 09 11 01	PR	203	03	400	G	03	18	12?0A	S1EP00	07
72 09 11 02	FL	203	06	2	G	99	99	0A?0A	0A0000	07
72 09 11 03	04	202	07	2	G	06	18	0?70A	1?7512	07
72 09 12 01	FL	206	06	20	G	02	99	0A?0A	0A0000	07
72 09 14 02	FL	203	07	5	G	99	99	1A?0A	000000	07

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DISCHARGE YR-MO-DA-HR	WATER STATE	ACDY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 09 14 01	FL	201	06	10	G	99	99	1AAAA	000000	07
72 09 15 01	GA	206	06	1	G	99	99	0AAAA	000000	07
72 09 16 01	FL	206	06	50	G	99	99	0AAAA	000000	07
72 09 18 02	FL	206	04	0		13	01	0AAAA	000000	07
72 09 18 01	FL	206	06	10	G	99	99	0AAAA	000000	07
72 09 19 03	FL	206	06	10	G	99	99	0AAAA	000000	07
72 09 19 01	FL	203	07	60	G	80	14	12400	400000	07
72 09 19 02	FL	203	06	470	G	06	44	12A05	204145	07
72 09 20 01	FL	206	06	15	G	99	99	0AAAA	000000	07
72 09 21 01	FL	206	06	15	G	99	99	0AAAA	000000	07
72 09 21 02	FL	202	06	250	G	04	07	0AAAA	239740	07
72 09 23 02	FL	103	07	5	G	02	05	1AAAA	145000	07
72 09 23 01	FL	202	08	2	G	00	51	0AAAA	000000	07
72 09 26 02	PA	203	04	1000	G	03	45	1AAAA	KUNZ00	07
72 09 26 01	GA	202	07	60	G	04	32	1AAAA	209565	07
72 09 27 01	PA	203	07	20	G	06	44	12400	SI 620	07
72 09 28 02	FL	103	03	20	G	41	19	1AAAA	150000	07
72 09 28 01	SC	206	02	50	G	04	11	1AAAA	2AA590	07
72 09 29 02	FL	106	09	50	G	03	44	0AAAA	LAFZ00	07
72 09 30 01	FL	206	04	0		99	99	0AAAA	000000	07
72 10 02 01	PA	203	06	0	G	01	51	1AAAA	EWUV	07
72 10 03 03	PA	205	07	0	G	41	48	1AAAA	100000	07
72 10 03 01	FL	102	04	15	G	02	45	0AAAA	OVUR	07
72 10 03 02	FL	206	06	10	G	07	23	0AAAA	FL0539	07
72 10 04 01	PA	205	07	0	G	25	53	1AAAA	150000	07

DISCHARGE YR-MO-DA-HR	WATER BODY STATE CODE		MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
72 10 04 02	FL	203	06	30	G	04	11	12?05	000000	07
72 10 05 01	PR	203	04	5	G	51	62	1A?0A	100000	07
72 10 05 02	VI	203	07	5	G	02	52	12?0A	000000	07
72 10 08 01	FL	206	10	3	G	99	99	0A?0A	000000	07
72 10 09 02	FL	203	02	30	G	06	46	12A0E	5I5024	07
72 10 09 01	FL	103	07	100	G	A0	44	12?0A	100000	07
72 10 10 02	FL	206	02	3	G	08	46	0AA0A	FI4251	07
72 10 10 01	FL	102	04	3	G	02	49	0AA0A	LWEZ	07
72 10 11 02	FL	203	02	10	G	03	10	10A0E	JVZP	07
72 10 11 01	FL	207	07	50	G	52	40	0AA0A	000000	07
72 10 12 01	SC	106	04	15	G	99	99	1AA0A	0A0000	07
72 10 13 01	FL	203	08	30	G	99	99	12?0E	000000	07
72 10 13 02	PR	312	10	0	G	02	51	1AA0A	SVR0	07
72 10 13 03	PR	201	07	10	G	52	62	1AA0A	100000	07
72 10 17 02	FL	203	02	10	G	25	46	10?0E	000000	07
72 10 17 01	AA	202	10	1	G	99	99	0AA0A	400000	07
72 10 18 01	VI	201	08	20	G	99	99	10?0A	000000	07
72 10 19 01	FL	208	07	250	G	02	44	12?0A	245225	07
72 10 20 01	PR	203	06	30	G	11	99	1AA0A	0A0000	07
72 10 24 02	AA	206	06	15	G	12	30	1A?0E	4A0000	07
72 10 24 01	PR	203	07	40	G	11	99	1AA0A	000000	07
72 10 26 01	VI	202	06	40	G	03	99	1AA0A	Y?RY	07
72 10 26 02	AA	202	11	2	G	99	99	0AA0A	000000	07
72 10 27 01	FL	203	07	15	G	03	40	12?0E	5I8738	07
72 10 28 01	FL	205	07	8	G	53	19	12A0E	400000	07

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DISCHARGE YR-MO-DA-HR	WATER BODY STATE CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVENT.	DIST
'2 10 31 02	FL 106	10	5	G	07	51	000000	000000	07
'2 11 02 01	PP 203	07	45	G	99	99	100000	000000	07
'2 11 02 02	FL 202	10	50	G	02	42	000000	3FCF	07
'2 11 02 03	GA 208	07	50	G	03	51	000000	000000	07
'2 11 06 01	FL 203	08	10	G	27	48	100000	400000	07
'2 11 06 03	FL 103	10	15	G	10	48	120000	100000	07
'2 11 06 02	FL 304	03	1	G	99	99	000000	000000	07
'2 11 08 01	FL 102	04	70	G	99	99	120000	000000	07
'2 11 08 02	GA 202	07	10	G	99	99	000000	400000	07
'2 11 09 04	SC 203	10	25	G	03	44	120440	GHLL	07
'2 11 09 01	GA 202	07	30	G	03	51	100000	299354	07
'2 11 09 03	FL 203	10	5	G	99	99	100000	000000	07
'2 11 09 02	FL 203	04	5	G	99	99	100000	400000	07
'2 11 12 01	SC 106	04	15	G	99	99	100000	000000	07
'2 11 13 02	VT 203	04	45	G	07	15	100000	00ZH	07
'2 11 13 03	FL 103	08	700	G	02	51	120000	RHAH	07
'2 11 13 01	FL 203	07	25	G	52	16	120000	400000	07
'2 11 15 02	SC 107	07	14000	G	21	11	120440	000000	07
'2 11 15 01	PP 202	06	100	G	99	99	100000	000000	07
'2 11 16 02	PP 203	10	10	G	03	46	100000	PFTT	07
'2 11 16 04	PP 203	07	5	G	02	46	100000	2AP073	07
'2 11 16 05	FL 203	10	30	G	99	99	000000	000000	07
'2 11 16 03	VT 203	07	126	G	00	99	100000	WBA685	07
'2 11 16 01	VT 203	04	2	G	03	31	100000	LHAE	07
'2 11 17 01	FL 202	07	5	G	02	46	000000	WFJP	07

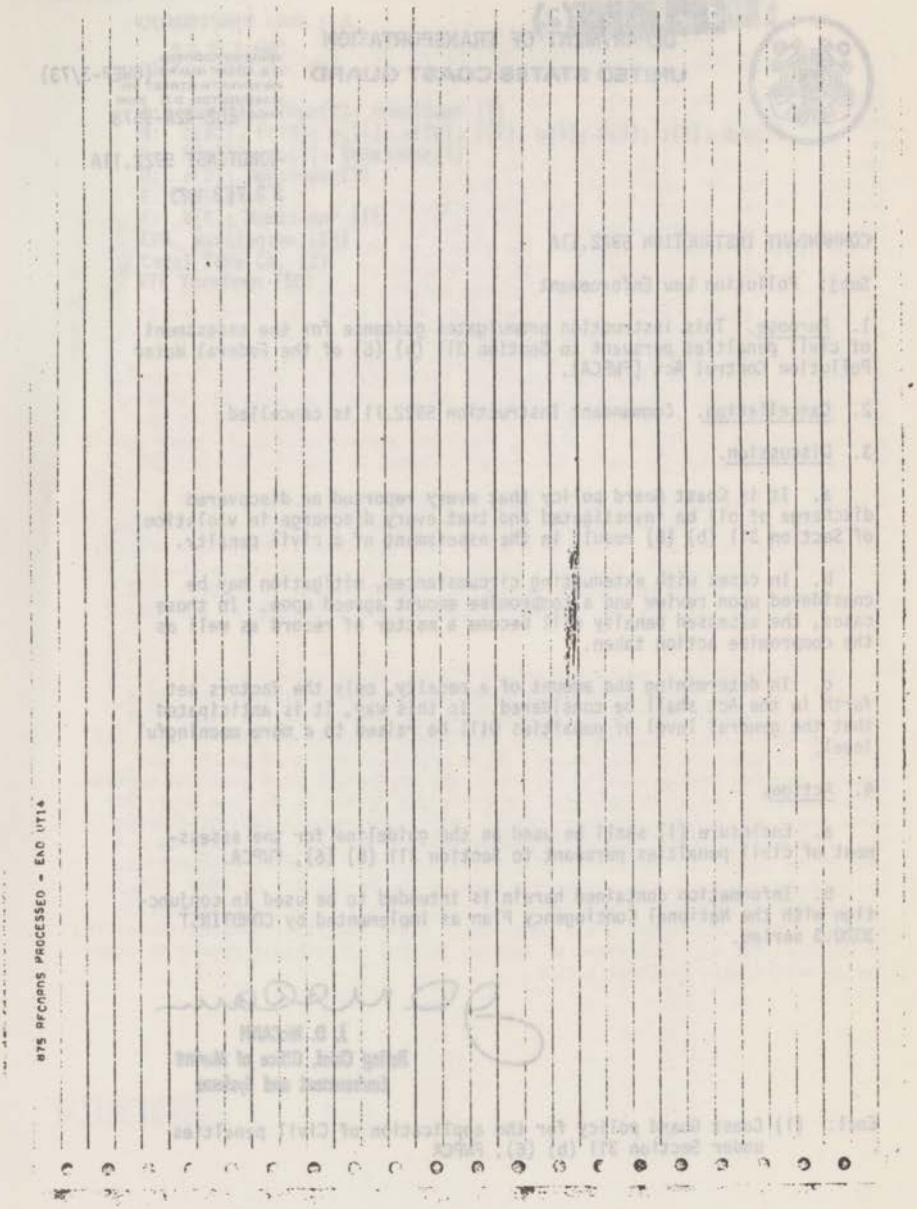
DISCHARGE YR-MO-DA-HH	WATER STATE	BODY CODE	MATERIAL	QUANTITY VOL/WGT	G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVNT.	DIST
72 11 18 02	VI	203	07	30	G	03	44	12?00?	IMAC	07
72 11 18 01	FL	202	08	10	G	01	44	0?0?0?	LAPJ	07
72 11 22 01	FL	203	08	3	G	00	07	12?00?	000000	07
72 11 23 01	PR	203	07	2	G	99	99	1?0?0?	000000	07
72 11 23 02	PR	203	03	160	G	03	48	1?0?0?	SLKZ	07
72 11 24 01	PR	203	03	0	G	03	44	1?0?0?	SLKZ	07
72 11 24 02	PR	203	03	5	G	51	42	1?0?0?	1?0000	07
72 11 29 03	SC	102	04	10	G	99	99	1?0?0?	000000	07
72 11 29 02	PR	203	07	450	G	52	99	1?0?0?	1?3000	07
72 11 29 01	FL	208	10	0	G	99	99	0?0?0?	000000	07
72 11 30 01	GA	202	08	1	G	02	18	0?0?0?	SYNF	07
72 12 01 01	GA	203	07	1	G	11	16	0?0?0?	1?0000	07
72 12 02 02	PR	203	07	2	G	0A	48	1?0?0?	29A101	07
72 12 02 01	FL	202	10	1	G	99	99	0?0?0?	000000	07
72 12 03 02	FL	203	10	70	G	99	99	12?0?	000000	07
72 12 03 01	PR	204	07	80	G	99	99	[illegible]	000000	07
72 12 04 02	FL	103	10	20	G	99	99	0?0?0?	000000	07
72 12 04 03	GA	203	02	0		11	44	12?0?	1?0003	07
72 12 04 04	GA	203	02	0		11	19	12?0?	1?0000	07
72 12 04 01	FL	202	10	15	G	99	99	12?0?	000000	07
72 12 04 01	FL	206	08	18	G	04	07	0?0?0?	000000	07
72 12 05 05	SC	103	04	5	G	99	99	1?0?0?	0?0000	07
72 12 05 02	VI	203	04	3	G	02	52	1?0?0?	SYPE	07
72 12 05 03	VI	203	03	2	G	03	23	1?0?0?	LIMD	07
72 12 05 04	FL	206	10	10	G	99	99	1?0?0?	0?0000	07

DISCHARGE YR-NO-DA-HR	WATER BODY STATE CODE	MATERIAL	QUANTITY VOL/WGT G/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL IDENT.	DIST
72 12 05 01	FL 203	04	0	03	31	1AA0A	TAAA5A	07
72 12 06 01	GA 202	07	50 G	53	18	12A0R	1A0000	07
72 12 06 02	GA 202	08	15 G	53	62	0AA0A	000000	07
72 12 07 01	GA 306	06	5 G	99	99	0AA0A	000000	07
72 12 07 02	GA 202	08	0	53	40	12A05	1A0000	07
72 12 10 01	GA 203	02	1 G	12	19	0A7A0	1A0000	07
72 12 11 01	GA 203	09	0	11	99	0A7A0	1A0000	07
72 12 13 01	FL 205	04	10 G	99	99	1AA0A	000000	07
72 12 14 02	FL 204	07	0	99	99	1AA0A	000000	07
72 12 14 01	FL 201	02	10 G	99	99	1AA0A	000000	07
72 12 14 03	PR 203	07	10 G	11	32	1A50A	100000	07
72 12 15 01	FL 103	04	50 G	02	45	12A0R	0AAC	07
72 12 17 01	VI 203	07	25 G	03	44	1A70A	000000	07
72 12 18 01	FL 103	06	5 G	06	13	1AA0A	5I5042	07
72 12 19 03	FL 103	04	0	54	23	1AA0A	100000	07
72 12 19 01	VI 203	03	40 G	03	48	1A70A	5WTZ	07
72 12 19 02	PR 203	07	100 G	99	99	1AA0A	000000	07
72 12 19 04	FL 102	07	0	10	52	12A0A	1A0000	07
72 12 20 01	PR 203	07	200 G	03	46	12A0A	67J0	07
72 12 22 03	PR 203	07	1 G	11	44	1A70A	7A1K	07
72 12 22 02	PR 203	07	5 G	06	50	1AA0A	531135	07
72 12 22 01	FL 105	10	3 G	99	99	1AA0A	000000	07
72 12 23 01	FL 203	07	35 G	07	24	0AA0A	E1WF	07
72 12 24 01	SC 103	05	0	30	18	12A0A	1A0000	07
72 12 25 01	GA 202	07	0	00	51	00A05	54A894	07

DISCHARGE D-MO-DAYHH	WATER STATE	ROUT CODE	MATERIAL	QUANTITY VOL/WGT	Q/P	SOURCE SPILL	CAUSE SPILL	RESPONSE	VESSEL INVNT.	DIST
2 12 28 01	FL	203	10	15	0	02	52	1AA06	TPH8	07
2 12 30 01	FL	203	07	20	0	03	32	13706	HAVU	07

TOTAL THIS YEAR 77 465 RECORDS 144213 gals

TOTAL GALLONS 410195


875 RECORDS PROCESSED - END UT14

ENCLOSURE(2)

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS:
U.S. COAST GUARD (GWEP-3/73)
400 SEVENTH STREET SW.
WASHINGTON, D.C. 20590
PHONE 202-426-9578

COMDTINST 5922.11A

23 FEB 1973

COMMANDANT INSTRUCTION 5922.11A

Subj: Pollution Law Enforcement

1. Purpose. This instruction promulgates guidance for the assessment of civil penalties pursuant to Section 311 (b) (6) of the Federal Water Pollution Control Act (FWPCA).

2. Cancellation. Commandant Instruction 5922.11 is cancelled.

3. Discussion.

a. It is Coast Guard policy that every reported or discovered discharge of oil be investigated and that every discharge in violation of Section 311 (b) (6) result in the assessment of a civil penalty.

b. In cases with extenuating circumstances, mitigation may be considered upon review and a compromise amount agreed upon. In those cases, the assessed penalty will become a matter of record as well as the compromise action taken.

c. In determining the amount of a penalty, only the factors set forth in the Act shall be considered. In this way, it is anticipated that the general level of penalties will be raised to a more meaningful level.

4. Action.

a. Enclosure (1) shall be used as the guideline for the assessment of civil penalties pursuant to Section 311 (b) (6), FWPCA.

b. Information contained herein is intended to be used in conjunction with the National Contingency Plan as implemented by COMDTINST 3020.3 series.

J. D. McCANN
Acting Chief, Office of Marine Environment and Systems

Encl: (1) Coast Guard policy for the application of Civil penalties under Section 311 (b) (6), FWPCA

COMDTINST 5922.11A

23 FEB 1973

DIST: (SDL No. 96)

A: abcd(3); fhmr(2); Remainder (1)
B: c(20); f(15); g(11); e(10); r(7); h(6); b(3); j(2); dpq(1)
C: bdn(3); go(2); Remainder(1)
D: a(2); Remainder(1)
E: All (1)
F: k(5); Remainder (1)
EPA, Washington (15)
Canal Zone Co. (2)
RTC Yorktown (50)

Enclosure (1) to COMDTINST 5922.11A

23 FEB 1973

COAST GUARD POLICY FOR THE APPLICATION
OF CIVIL PENALTIES UNDER SECTION 311 (b) (6), FWPCA

Consistent with the language of the Federal Water Pollution Control Act, Coast Guard policy requires the assessment of a civil penalty for each discharge of oil in violation of Section 311 (b) (3). A maximum penalty of $5,000 is authorized by Section 311 (b) (6); however, the drafters of the Act envisioned lesser penalties in certain circumstances. Section 311 (b) (6) provides that, "In determining the amount of the penalty. . .the appropriateness of the penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation shall be considered. . ." That is to say that the penalty might be less than $5,000 for a small business, for a business which would be forced out of operation by the maximum penalty, or for a violation of minor gravity. It should be noted, however, that these factors are not to be considered in determining whether a discharge should be investigated or whether a penalty should be assessed. The statute requires that a civil penalty be assessed for each violation of Section 311 (b) (3). It is Coast Guard policy to assume that the penalty will be at or near the maximum unless a lesser penalty is clearly justified by one of the factors listed in Section 311 (b) (6).

A number of considerations may be made in determining the gravity of a violation, such as the degree of culpability associated with the violation, the prior record of the responsible party, and the amount of oil discharged. Substantial intentional discharges should result in severe penalties, as should cases of gross negligence, and so on. This is not to suggest that other considerations may not combine to determine the gravity of a violation.

Two factors should not be considered in fixing the amount of a civil penalty: (1) the responsible party's removal effort or expense and (2) a decision by Federal and/or state authorities to bring criminal action for the same discharge. Liability for a civil penalty under Section 311 (b) (6) attaches at the time of discharge. It is entirely unrelated to the subsequent removal responsibility for which the discharger must bear the expense, either directly or by reimbursing the Pollution Fund. In no case may a responsible party avoid or reduce a civil penalty by removing the discharged oil. Federal or state criminal prosecutions for the same discharge do not affect the imposition or amount of a civil penalty. Criminal prosecutions are brought under separate authority such as the Refuse Act of 1899. They are neither intended as substitutes for civil penalties nor do they create a legal bar to subsequent civil penalties. Civil penalties should, therefore, be assessed for all violations of Section 311 (b) (3) without regard to pending or anticipated criminal action.

ENCLOSURE(7)

TABLE B. DATA ON ALL BRIDGE AND CAUSEWAY PERMIT APPLICATIONS PENDING, APPROVED OR DENIED BY THE COAST GUARD IN THE 7TH DISTRICT SINCE OCTOBER 15, 1966

(1)	(2)	(3)		(4)
Name & Address of Applicant	Purpose of the Application	(a) Date Application Filed	(b) Date Work Commenced	Date Coast Guard Issued Notice of the Application
Byars Development Corp. 1210 Culbreath Isle Drive Tampa, Florida, 33609	To receive permit for existing causeway bridge connecting Culbreath Isles Unit #2 across North-South Canal, Culbreath Bayou, Old Tampa Bay 22 February 1971 CCGD7 Legal Office advises subject waters appear to be navigable water of the U.S. with assertion of Coast Guard jurisdiction over them proper.	9 March 1971	1970	26 March 1971
Mailman Development Corp. Miami Beach, Florida	To receive permit for authorization of on-going construction of bridge over South Channel Hallandale, Florida	30 October 1970	4 June 1970	28 December 1970 (Notice of Hearing)

TABLE B. DATA ON ALL BRIDGE AND CAUSEWAY PERMIT APPLICATIONS PENDING, APPROVED OR DENIED BY THE COAST GUARD IN THE 7TH DISTRICT SINCE OCTOBER 15, 1966

(1)	(5)	(6)	(7)
Name & Address of Applicant	Names of Government Agencies Which Commented on Application	Names of Non-Government Agencies and Persons Who Commented on the Application	Date Public Hearing Held
Byars Development Corp. 1210 Culbreath Isle Dr. Tampa, Florida	Florida Air and Water Pollution Control; State of Florida Trustees	Mr. John R. Lawson, Jr. representing nearby property owners; advises his clients would have no objection to bridge provided bridge span would satisfy tidal flow requirements. Coast Guard investigation, including consultation with appropriate State agencies, found no significant impacts on water quality or flow.	None, no significant controversy in case
Mailman Development Corp. Miami Beach, Florida	None	Seven individuals commented from standpoint of navigation.	19 January 1971

TABLE B. DATA ON ALL BRIDGE AND CAUSEWAY PERMIT APPLICATIONS PENDING, APPROVED OR DENIED BY THE COAST GUARD IN THE 7TH DISTRICT SINCE OCTOBER 15, 1966

(1)	(8)	(9)		(10)	
Name & Address of Applicant	Date Commander Filed Report on Application (Attach copy thereof.)	Date Permit Was: (a) Issued	(b) Denied	If Application Was Filed After Work Commenced, Did Coast Guard Prosecute the Violator: (a) Civilly	(b) Criminally
Byars Development Corp. 1210 Culbreath Isle Dr. Tampa, Florida	5 August 1971	16 Sept. 1971		no	no
Mailman Development Corp. Miami Beach, Florida	24 February 1971	22 March 1971		16 December 1970, U.S. District Court granted preliminary injunction against construction of bridge 13 January 1971 court entered a consent order declaring waters navigable, continuing injunction until permit from Coast Guard is obtained.	

ENCLOSURE(8)

LIST OF COMPLAINTS OF SECTION 9 VIOLATIONS PENDING UNDER HEADQUARTERS REVIEW OR RECENTLY CLOSED.

WATERWAY	OWNER	SECTION 9 COMPLAINT	ACTION TAKEN	DISPOSITION
Sturgeon Bay, Sturgeon Bay, Wisc	City of Sturgeon Bay, Wisc.	Abandoned RR Bridge	CG negotiating with city to voluntarily remove bridge	Case pends
St. Louis River, Duluth/Superior Harbor	Burlington Northern RR Co, St. Paul, Minn	Abandoned RR Bridge	Owner voluntarily removing bridge. Work commenced summer 1971 anticipate completion of removal 1974	Case pends
WHCA Creek, Sandy Creek, NY	Mrs Eva B Smith, Miami, Florida	Construction of bridge without approval of location and plans and bridge abandoned.	Owner requested by CG on 16 April 1973 to voluntarily remove bridge before determination of legal remedies which may be sought.	Case pends
Great Canal, Satellite Beach, Florida	Commonwealth Continental Corp, Seminole, Fla	Construction of bridge without approval of location and plans.	Owner ordered by CG on 3 May 1973 to remove bridge within 1 year	Case pends
North River, Union Street Bridge Plymouth County, Mass	Plymouth County Commissioners, Plymouth, Mass	Alteration of drawbridge without approval of location and plans.	Owner ordered by CG on 30 Nov 1971 to restore bridge to conform with approved plans on or before 1 May 1972	Owner refused or failed to comply with order. Chief Counsel USCG requested on 1 Dec to refer case to the US Attorney Dept of Justice. Case pends

DEPARTMENT OF TRANSPORTATION UNITED STATES COAST GUARD

POLLUTING INCIDENTS IN AND AROUND U. S. WATERS

Calendar Year 1971

COMMANDANT (GWEP)
U. S. Coast Guard
400 7th Street, S. W.
Washington, D. C. 20590

POLLUTING INCIDENTS IN AND AROUND U. S. WATERS

Calendar Year 1971

The Marine Environmental Protection program is the Coast Guard's newest program, even though it is founded on half a century of involvement in enforcement of Federal anti-pollution laws. The program evolved from our traditional law enforcement, safety, and search and rescue programs and contains elements from each of these historic Coast Guard mission areas.

The original emphasis of our anti-pollution efforts was on enforcement, specifically enforcement of the Refuse Act of 1899 and the recently repealed Oil Pollution Act of 1924. When anti-pollution efforts took on new dimensions through recognition of the Federal role in pollution prevention and clean-up efforts, the Coast Guard was assigned broader responsibilities. In 1970 the Federal Water Pollution Control Act (FWPCA) was amended by the Water Quality Improvement Act, which provides the statutory authority for our present program of pollution prevention, clean-up, and enforcement in the marine environment. The FWPCA, as amended, requires that notification be made to the appropriate agency of the U. S. Government of the discharge of oil in harmful quantities from a vessel or facility into the navigable waters of the United States. The Coast Guard has been designated as the appropriate agency to receive this notification.

The following statistics are based on data files maintained at U. S. Coast Guard Headquarters in Washington, D. C. and represent those discharges reported to the Coast Guard by responsible

parties as required by the FWPCA, by other parties, by other agencies, or as discovered by Coast Guard personnel.

Included in the file are discharges into U. S. navigable waters (extending to three miles from the coastline), into tributaries to the navigable water, into the contiguous zone (extending from three to twelve miles from the coastline), or into waters or onto shorelines such as to threaten the navigable waters or the contiguous zone.

It is important to note that a comparison of the 1971 data with the 3,711 incidents reported or discovered in 1970 indicates primarily that the 1971 data are more complete, because the legal requirement to report discharges of oil in harmful quantities was in effect for the entire calendar year. We have no reason to believe that the number of discharges which actually occurred was any greater in 1971 than in 1970.

GENERAL AREAS

	NUMBER OF INCIDENTS	% of TOTAL	VOLUME IN GALLONS	% of TOTAL
ATLANTIC COAST	2,145	24.6	1,703,719	19.3
GULF COAST (West of Long.83°15')	3,974	45.5	1,070,226	12.1
PACIFIC COAST	1,609	18.4	2,178,621	24.6
GREAT LAKES	377	4.3	2,477,050	28.0
INLAND U. S.	631	7.2	1,409,867	16.0
TOTAL	8,736	100.0	8,839,523	100.0

TYPE OF LOCATION

	NUMBER OF INCIDENTS	% of TOTAL	VOLUME IN GALLONS	% of TOTAL
INLAND WATERS				
1. ROADSTEADS	99	1.1	14,447	0.2
2. PORTS	63	0.7	179,194	2.0
3. TERMINALS AND DOCKS	141	1.6	80,306	0.9
4. BEACHES	7	0.1	39,952	0.5
5. RIVER AREAS	252	2.9	704,245	8.0
6. NON-NAVIGABLE AREAS	69	0.8	391,723	4.4
TOTAL	631	7.2	1,409,867	16.0
COASTAL WATERS (INCLUDING GREAT LAKES)				
1. BAYS, ESTUARIES AND SOUNDS	2,933	33.6	2,113,067	23.9
2. PORTS	1,452	16.6	808,294	9.1
3. TERMINALS AND DOCKS	869	10.0	470,958	5.3
4. BEACHES	93	1.1	17,293	0.2
5. CHANNELS, CANALS, AND INLETS	869	10.0	491,352	5.6
6. RIVER AREAS	938	10.7	640,930	7.3
7. NON-NAVIGABLE AREA	47	0.5	2,178,365	24.6
8. OPEN WATERS (GREAT LAKES OR TERRITORIAL SEA)	315	3.6	37,736	0.4
TOTAL	7,516	86.1	6,757,995	76.4
CONTIGUOUS ZONE	396	4.5	651,177	7.4
HIGH SEAS	193	2.2	20,484	0.2
TOTAL	8,736	100.0	8,839,523	100.0

TYPE OF MATERIAL DISCHARGED

	NUMBER OF INCIDENTS	% of TOTAL	VOLUME IN GALLONS	% of TOTAL
LIGHT OIL (GASOLINE, LIGHT FUEL OIL, KEROSENE, LIGHT CRUDE)	4,320	49.5	2,822,463	31.9
HEAVY OIL (DIESEL OIL, HEATING OIL, HEAVY FUEL OIL, HEAVY CRUDE, ASPHALT)	1,603	18.4	2,934,181	33.2
LUBRICATING OIL	168	1.9	22,365	0.3
ANIMAL OR VEGETABLE OIL	39	0.4	18,957	0.2
WASTE OIL	930	10.6	164,352	1.9
OTHER OIL	462	5.3	2,673,077	30.2
SEWAGE	24	0.3	2,509	0.0
REFUSE AND GARBAGE	56	0.6	336	0.0
DREDGE SPOIL	15	0.2	168	0.0
OTHER MATERIAL	174	2.0	112,030	1.3
UNKNOWN	945	10.8	89,085	1.0
TOTAL	8,736	100.0	8,839,523	100.0

SOURCES

	NUMBER OF INCIDENTS	% of TOTAL	VOLUME IN GALLONS	% of TOTAL
VESSELS				
1. DRY CARGO VESSELS	271	3.1	418,206	4.7
2. TANK SHIPS	386	4.4	1,665,264	18.8
3. TANK BARGES	828	9.5	1,197,819	13.6
4. COMBATANT VESSELS	261	3.0	440,849	5.0
5. OTHER VESSELS	388	4.4	180,127	2.0
TOTAL	2,134	24.4	3,902,265	44.1
LAND VEHICLES	77	0.9	101,225	1.2
ONSHORE FACILITIES				
1. REFINERIES	188	2.2	2,206,781	25.0
2. BULK STORAGE FAC.	296	3.4	446,567	5.1
3. WATERFRONT TRANSPORTATION FACILITIES	382	4.4	613,970	6.9
4. NON-TRANSPORTATION FACILITIES	450	5.1	435,978	4.9
5. OTHER LAND TRANSPORTATION FACILITIES	22	0.3	159,961	1.8
TOTAL	1,338	15.4	3,863,257	43.7
OFFSHORE FACILITIES	2,595	29.7	662,203	7.5
MISCELLANEOUS	239	2.7	61,038	0.7
UNKNOWN	2,353	26.9	249,535	2.8
TOTAL	8,736	100.0	8,839,523	100.0

CAUSES

	NUMBER OF INCIDENTS	% of TOTAL	VOLUME IN GALLONS	% of TOTAL
COLLISON	62	0.7	1,455,900	16.5
GROUNDING	54	0.6	898,039	10.1
CAPSIZING OR OVERTURNING	21	0.2	32,575	0.4
FIRE & EXPLOSION	9	0.1	398,400	4.5
OTHER CASUALTY	68	0.8	260,805	2.9
TANK RUPTURE	70	0.8	2,081,443	23.5
STRUCTURAL FAILURE	26	0.3	7,620	0.1
STORAGE TANK RUPTURE OR LEAK	123	1.4	146,815	1.7
HOSE RUPTURE	110	1.2	50,347	0.6
LINE LEAK	1,529	17.5	562,896	6.4
PIPE RUPTURE OR LEAK	588	6.7	674,506	7.6
OTHER RUPTURE OR LEAK	311	3.6	191,440	2.2
VALVE FAILURE	461	5.3	141,578	1.6
PUMP FAILURE	207	2.4	14,142	0.2
OTHER EQUIPMENT FAILURE	279	3.2	118,329	1.3
TANK OVERFLOW	253	2.9	100,787	1.1
IMPROPER HOSE CONNECTION	71	0.8	8,476	0.1
OTHER PERSONNEL FAILURE	505	5.8	926,687	10.5
INTENTIONAL DISCHARGE	359	4.1	50,652	0.6
NATURAL PHENOMENON	94	1.1	5,805	0.1
UNKNOWN	3,536	40.5	712,281	8.0
TOTAL	8,736	100.0	8,839,523	100.0

INCIDENTS BY MONTH

	NUMBER OF INCIDENTS	% of TOTAL	VOLUME IN GALLONS	% of TOTAL
JANUARY	655	7.5	3,785,761	42.8
FEBRUARY	660	7.5	430,745	4.9
MARCH	835	9.6	390,149	4.4
APRIL	703	8.0	371,412	4.2
MAY	711	8.1	529,295	6.0
JUNE	775	8.9	331,780	3.8
JULY	801	9.2	322,018	3.7
AUGUST	669	7.7	389,816	4.4
SEPTEMBER	794	9.1	516,076	5.8
OCTOBER	685	7.8	506,100	5.7
NOVEMBER	724	8.3	512,709	5.8
DECEMBER	724	8.3	753,662	8.5
TOTAL	8,736	100.0	8,839,523	100.0

SOURCE AND CAUSE — Number of incidents / Volume in Gallons

SOURCE \ CAUSE	Collision	Grounding	Capsizing/ Overturning	Fire/Explosion	Other Casualty	Tank Rupture	Hull Structural Failure	Storage Tank Rupture or Leak	Hose Rupture	Line Leak
Vessels										
Dry Cargo	2 / 420	1 / 126	X	1 / 398,000	6 / 3,000	X	3 / 510	1 / 42	4 / 970	6 / 172
Tankships	6 / 1,098,400	13 / 630,025	X	X	2 / 240	8 / 1,567	5 / 1,110	19 / 3,519	16 / 19,269	8 / 8,515
Tank Barges	30 / 307,575	18 / 440,033	2 / 79	X	4 / 104	48 / 60,015	14 / 1,281	38 / 2,499	24 / 2,719	127 / 48,275
Combatant	2 / 16,500	2 / 100	X	X	1 / 130,000	X	1 / 10	7 / 2,400	3 / 55	5 / 210
Other	7 / 2,000	20 / 27,795	4 / 0	7 / 400	42 / 123,498	1 / 10	X	1 / 5	2 / 215	13 / 1447
LAND VEHICLES	9 / 22,900	X	15 / 32,500	X	3 / 3,700	X	X	X	X	1 / 50
ONSHORE FACILITIES										
Refineries	2 / 225	X	X	X	X	1 / 2,900,000	X	6 / 115	8 / 2,360	45 / 115,405
Bulk Storage Facilities	1 / 100	X	X	1 / 0	X	4 / 15,666	X	18 / 27,490	4 / 1,480	6 / 1,395
Waterfront Transportation Facilities	2 / 800	X	X	X	2 / 150	1 / 0	1 / 0	9 / 99,529	19 / 19,392	25 / 5,366
Non-Transport. Facilities	X	X	X	X	X	5 / 4,120	X	10 / 8,724	9 / 2,212	24 / 1,497
Other Land Transportation Facilities	X	X	X	X	X	X	1 / 4,600	X	X	X
OFFSHORE FACILITIES	1 / 7,000	X	X	X	5 / 143	2 / 75	1 / 109	10 / 459	21 / 2,078	1,267 / 380,602
MISCELLANEOUS	X	X	X	X	1 / 30	X	X	10 / 2,035	X	2 / 2
UNKNOWN	X	X	X	X	X	X	X	X	X	X
TOTAL	62 / 1,455,900	54 / 898,039	21 / 32,575	9 / 398,400	68 / 260,805	70 / 2,081,443	26 / 7,620	123 / 146,815	110 / 50,347	1,529 / 562,896

SOURCE AND CAUSE	Number of Incidents / Volume in Gallons										
	Pipe Rupture or Leak	Other Rupture or Leak	Valve Failure	Pump Failure	Other Equipment Failure	Tank Overflow	Improper Hose Connection	Other Personnel Failure	Intentional Discharge	Natural Phenomenon	Unknown	Total
	2 / 16	6 / 226	9 / 3,194	1 / 5	13 / 483	37 / 4,072	6 / 117	50 / 1,942	75 / 2,504	2 / 1	46 / 2,826	271 / 418,206
	10 / 3,085	34 / 27,805	17 / 12,840	8 / 928	37 / 27,959	18 / 5,324	5 / 637	58 / 11,367	22 / 1,973	3 / 104	97 / 10,607	386 / 1,665,264
	94 / 29,407	88 / 11,985	56 / 24,994	10 / 328	28 / 8,070	68 / 10,266	18 / 4,017	60 / 331,015	14 / 201	2 / 2	125 / 14,960	828 / 1,197,819
	2 / 70	10 / 983	5 / 1,735	x	x	18 / 41,057	3 / 101	52 / 240,291	43 / 1,764	x	107 / 5,573	261 / 440,849
	4 / 181	8 / 503	3 / 75	3 / 25	14 / 12,270	21 / 1,101	1 / 1	41 / 2,087	71 / 2,049	4 / 26	121 / 6,521	388 / 180,127
	1 / 84	x	x	x	4 / 7,100	10 / 4,627	1 / 30	7 / 1,080	10 / 20,155	1 / 5	15 / 8,994	77 / 101,225
	28 / 62,902	16 / 2,442	15 / 11,279	2 / 226	5 / 611	15 / 5,856	7 / 554	12 / 844	2 / 84	8 / 1,074	16 / 2,804	188 / 2,206,781
	11 / 56,030	4 / 420	3 / 45,050	1 / 20	57 / 14,479	5 / 527	x	37 / 175,405	3 / 2,000	25 / 1,787	122 / 104,758	296 / 446,567
	59 / 262,938	34 / 126,429	16 / 10,135	4 / 555	13 / 2,795	10 / 577	10 / 742	56 / 9,191	14 / 44	2 / 1,500	105 / 73,848	382 / 613,970
	33 / 77,758	10 / 5,477	11 / 1,447	5 / 435	33 / 2,259	17 / 24,650	5 / 1,530	34 / 246,284	80 / 15,863	15 / 406	159 / 43,316	450 / 435,978
	2 / 200	1 / 20	x	x	x	2 / 28	x	4 / 2,103	6 / 3,000	1 / 0	5 / 150,010	22 / 159,961
	376 / 178,383	99 / 15,090	325 / 30,828	173 / 11,620	57 / 6,241	29 / 2,702	15 / 747	69 / 1,691	6 / 255	14 / 785	125 / 23,397	2,595 / 662, 203
	6 / 3,452	1 / 60	1 / 1	x	18 / 36,062	3 / 0	x	25 / 3,389	13 / 760	17 / 115	140 / 15,132	239 / 61,038
	x	x	x	x	x	x	x	x	x	x	2,353 / 249,535	2,353 / 249,535
	588 / 674,506	311 / 191,440	461 / 141,578	207 / 14,142	279 / 118,329	253 / 100,787	71 / 8,476	505 / 926,687	359 / 50,652	94 / 5,805	3,536 / 712,281	8,736 / 8,839,523

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS:
U.S. COAST GUARD (CWEP-3/73)
400 SEVENTH STREET SW.
WASHINGTON, D.C. 20590
PHONE: 202-426-9578

COMDTINST 5922.11

22 SEP 1972

COMMANDANT INSTRUCTION 5922.11

Subj: Pollution Law Enforcement

1. Purpose. This instruction promulgates guidance for the assessment of civil penalties pursuant to Section 11 (b)(5) of the Federal Water Pollution Control Act (FWPCA), as amended (33 USC 1161).

2. Discussion.

a. It is Coast Guard policy that every reported or discovered discharge of oil be investigated and that every knowing discharge in violation of Section 11 (b)(5) result in the assessment of a civil penalty.

b. In cases with extenuating circumstances, mitigation may be considered upon review and a compromise amount agreed upon. In those cases, the assessed penalty will become a matter of record as well as the compromise action taken.

c. In determining the amount of a penalty, only the factors set forth in the Act shall be considered. In this way, it is anticipated that the general level of penalties will be raised to a more meaningful level.

3. Action.

a. Enclosure (1) shall be used as the guideline for the assessment of civil penalties pursuant to Section 11 (b)(5), FWPCA, as amended.

b. Information contained herein is intended to be used in conjunction with the National Contingency Plan as implemented by COMDTINST 3020.3 series.

W. M. BENKERT
Chief, Office of Marine Environment & Systems

Encl: (1) Coast Guard policy for the application of Civil penalties under Section 11 (b)(5), FWPCA

COMDTINST 5922.11
22 SEP 1972
DIST: (SDL No. 95)

A: abcd (3); f hmr (2); Remainder (1)
B: c (20); f (15); g (11); e (10); r (7); h (6); b (3); j (2); dpq (1)
C: bdn(3); go(2); Remainder (1)
D: a(2); Remainder (1)
E: All (1)
F: k (5); Remainder (1)
EPA, Washington (15)
Canal Zone Co. (2)

Enclosure (1) to COMDTINST 5922.11
22 SEP 1972

Coast Guard Policy for the Application of Civil Penalties under Section 11 (b)(5), FWPCA

Consistent with the language of the statute, Coast Guard policy requires the assessment of a civil penalty for each knowing discharge of oil in violation of Section 11 (b)(2). A knowing discharge not only includes deliberate intentional or willful acts or omissions that result in the discharge of oil in violation of the Act but also includes those acts or omissions which, although without actual intent to cause the discharge of oil, are the result of negligence and there is reasonable cause to believe that such act or omission would inevitably or probably result in the discharge of oil because of existing circumstances or conditions. A more detailed explanation of "knowing discharge" may be found in Law Bulletin 396.

A maximum penalty of $10,000 is authorized by Section 11 (b)(5), FWPCA; however, drafters of the Act envisioned lesser penalties in certain circumstances. Section 11 (b)(5) provides that, "In determining the amount of the penalty...the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation shall be considered..." That is to say that the penalty might be less than $10,000 for a small business, or for a business which would be forced out of operation by such a penalty or for a violation of minor gravity. It should be noted, however, that these factors are not to be considered as factors in determining whether a discharge should be investigated or whether a penalty should be assessed. The statute requires that a penalty be assessed for each violation of Section 11 (b)(2). It is Coast Guard policy to assume that the penalty will be at or near the maximum unless a lesser penalty is clearly justified by one of the factors listed in Section 11 (b)(5).

Two factors which are not mentioned and should, therefore, not be considered in setting the amount of a civil penalty are the responsible party's removal effort and a decision by Federal and/or State authorities to bring criminal action for the same discharge.

Liability for a civil penalty under Section 11 (b)(5) attaches at the time of discharge. It is entirely unrelated to the subsequent removal responsibility for which the discharger must bear the expense either directly or by reimbursing the Pollution Fund. In no case may a responsible party avoid or reduce a civil penalty by removing the discharged oil.

Federal or State criminal prosecutions for the same discharge do not affect the imposition or amount of a civil penalty. Criminal prosecutions are brought under separate authority such as the Refuse Act of 1899. They are neither intended as substitutes for civil penalties nor do

they create a legal bar to subsequent penalties. Civil penalties should therefore be assessed for all violations of Section 11 (b)(2) without regard to pending or anticipated criminal action.

A number of factors lend themselves to determining the gravity of a violation, such as the degree of culpability associated with the violation, the prior record of the responsible party, and the amount of the discharge. Substantial intentional discharges should result in severe penalties as should cases of gross negligence and so on. This is not to suggest that other factors may not combine to determine the gravity of a violation. A basic premise however, is that it is more advantageous to assess a severe penalty with subsequent mitigation than to assess a lesser penalty or no penalty at all.

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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400 SEVENTH STREET SW.
WASHINGTON, D.C. 20590
PHONE: 202-426-4280

5730

11 JAN 1973

JAN 16 RECD

Honorable Henry S. Reuss
Chairman, Subcommittee on Conservation
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Reuss:

On 27 June 1972, you requested a detailed report of Coast Guard enforcement efforts in the Contiguous Zone of the United States during the period ending 30 September 1972. We have completed our review of the pollution incident reports of the Coast Guard district commanders and forward the following information.

Between 15 June and 30 September 1972, the Coast Guard initiated penalty action against one violator of the Federal Water Pollution Control Act in the Contiguous Zone. This case involved a fishing vessel which pumped bilges about five miles offshore, discharging an estimated 5-10 gallons of diesel oil. No cleanup was feasible in these waters. At a hearing, the owner of the vessel was assessed a civil penalty of $300.00. The decision was appealed to the district commander, who approved the penalty as appropriate. The owner has since appealed his case to the Commandant on the basis of his ability to continue in business. Since 30 September 1972, the Coast Guard has initiated civil penalty action against a German freighter, also for pumping bilges.

It must be kept in mind that few violations of the FWPCA are reported or discovered in the Contiguous Zone. During the first nine months of 1972, only 20 discharges from vessels of harmful quantities of oil into the Contiguous Zone were reported to the Coast Guard or discovered by Coast Guard personnel, totaling about 1300 gallons. Only six of these discharges occurred after the declaration of the Contiguous Zone on 15 June, totaling about 220 gallons. One of these six discharges was caused by an unidentified fishing vessel during a storm. Four more were of such small quantity that an investigation was not considered worthwhile. The sixth discharge was the penalty case discussed above. In open waters, it is often impossible to investigate suspected violations before the small quantities involved are dissipated. However, with the substitution of "discharged" for "knowingly discharged" in the 1972 amendments to the FWPCA, civil penalty actions against violators in the Contiguous Zone may be more easily initiated.

Subj: Report of Coast Guard enforcement efforts in the Contiguous Zone

The Coast Guard's enforcement efforts in the Contiguous Zone are carried out by several means. Six aircraft from five Coast Guard air stations are now conducting regular pollution surveillance patrols over the Contiguous Zone. Fisheries patrols and search and rescue operations regularly conducted by aircraft and vessels in the Contiguous Zone also help deter and detect pollution violators. And of course, any Coast Guard vessel in transit through the Contiguous Zone is watchful for illegal discharges.

If you have any further questions concerning Coast Guard enforcement of the FWPCA, please do not hesitate to call upon us.

Sincerely,

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

APPENDIX 2

PART A.—MATERIALS SUBMITTED BY THE U.S. ARMY CORPS OF ENGINEERS IN RESPONSE TO SUBCOMMITTEE LETTER OF APRIL 19, 1973

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 19, 1973.

Maj. Gen. D. A. RAYMOND,
South Atlantic Division,
U.S. Army Corps of Engineers,
Atlanta, Ga.

DEAR GENERAL RAYMOND:

* * * * * * *

We request that your prepared testimony include a discussion of the following issues and matters. To the extent they cover issues and matters outside your District, please obtain the information through consultation with the appropriate District Engineer.

1. Our committee, in its report entitled "Increasing Protection For Our Waters, Wetlands, and Shorelines: The Corps of Engineers" (H. Rept. 92–1323, Aug. 10, 1972), found that the Corps authorizes persons to conduct some work in navigable waterways under section 10 of the 1899 River and Harbor Act without following its regular procedures concerning public notice, hearings, etc. A copy of our report is enclosed.

Our committee recommended (p. 16) as follows:

> "The Corps of Engineers should (a) revise its procedures concerning 'letters of permission' authorizing work in navigable waterways to comply with the State certification requirements of section 21(b) of the Federal Water Pollution Control Act; and (b) provide public notice and opportunity for comment on all applications for such authorization."

(a) Do you issue letters of permission for work requiring a permit under section 10?

(b) If the answer to (a) is yes, please advise us whether or not you are now doing so in conformance with the above recommendation.

2. Our committee's report, *supra*, discussed on pages 16–26 the Corps' failure vigorously to prosecute violations of section 10. We have been told that the Corps has increased its issuance of cease and desist orders, but we have seen little increase in prosecution of those violating the law. For example, on October 13, 1972, the U.S. Attorney for the Northern District of Florida, Mr. William Stafford, wrote to the Mobile, Ala., District Engineer about illegal dredging in Upper Goose Bayou near Panama City, and the Kenner reclamation project, at Wewahitchka, Fla. He noted that "the Corps has consistently and patiently corresponded with the principals involved with both matters but they have apparently failed to cooperate or take the necessary steps to come into compliance with Federal law," and that since "we may have run the full course on them administratively" he suggested that the District Engineer "consider referral of this matter for initiation of legal action," and restated his "commitment" to support the Corps "whenever possible in these matters."

But we understand that the Corps has not yet acted on Mr. Stafford's suggestion, even though the Corps has issued three cease and desist orders in the Kenner case since last October, and, according to a February 3, 1973, letter of the Bureau of Sport Fisheries and Wildlife to the Corps' Mobile office, the developer continues to violate the orders.

(a) Please provide to us the complete details of both of these cases, including a copy of all letters, memoranda, notes, and other documents, and the current status of these cases.

(b) Please provide to us the information requested on the enclosed table.

3. (a) State the extent to which the Corps does maintenance dredging in the Florida area, including coastal waters, and the means used in doing so.

(b) How and where are dredged materials disposed of?

(c) Please state the Corps' annual costs of dredging (by waterway) in the Florida area for the last 5 fiscal years, and indicate whether the Corps has recovered any of these costs from industrial or other dischargers.

4. (a) List all Corps beach erosion and shore protection projects currently underway in Florida or planned for fiscal years 1973 and 1974, and the cost of each to (1) the Corps, and (2) to others.

(b) State the extent to which beach erosion is a serious problem in the Florida area (identify each major problem area).

(c) State the measures needed to resolve the problem in each area, and the cost thereof to the Federal Government and others.

5. Please provide to us:

(a) A list of all authorized but uncompleted Corps projects for the Florida area, indicating:

(1) the type and purpose of each project, and its location;
(2) when each was authorized;
(3) the statutory authority for each;
(4) the estimated cost of each project at time of authorization;
(5) the current estimated cost of each project (if known);
(6) the current status of each project; and
(7) whether or not an environmental impact statement has been prepared for the project.

(b) A list of all small boat projects currently under construction or planned for fiscal years 1973 or 1974 in Florida showing:

(1) the location and purpose of the project; and
(2) the cost of the project to the Corps and to others.

6. We understand that the Corps is undertaking at least one urban studies program in Florida.

(a) Please identify all corps urban studies programs planned for the Florida area, the cost to the Corps, and the statutory basis for each.

(b) Please describe the purpose of each and list all participating agencies.

(c) Please explain why, in the case of the Northwest Florida Urban Study covering an 11-county area in the Florida panhandle, no funds have been transferred to the Bureau of Sport Fisheries and Wildlife to participate in the study.

7. In an October 27, 1970, letter to the Bureau of Sport Fisheries and Wildlife concerning a citizen complaint about a development in Bonita Springs, Fla., affecting a navigable waterway, the Jacksonville district office of the Corps stated:

> "Although the Corps does administer statutory jurisdiction over navigable waters for the protection and preservation of public rights of navigation, *the Department has not elected to assert jurisdiction and assume fostering care* of all minor streams and lakes, headwaters of rivers, drainage canals, and artificially created canals cut into the uplands *because the cost of exercising such jurisdiction would be disproportionate to the benefits which might be realized.*" (Italic supplied.)

(a) What is the cost "of exercising jurisdiction" in these cases?

(b) Does the above statement currently reflect the policy of (1) the Jacksonville district office, (2) your Division, or (3) the Corps? Please explain.

8. It is our understanding that the New Orleans district office issues so-called "letters of no objection."

(a) Please explain what these are and under what circumstances they are issued.

(b) Are such letters issued in the Florida area?

9. To what extent does the Corps provide an opportunity under the Fish and Wildlife Coordination Act for the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration to review permit applications for the Outer Continental Shelf area?

10. On March 12, 1973, the New Orleans District Engineer's office advised the Interior Department that "permits are not required for the interior canal system at Eden Isles," despite the fact that these wide and deep canals connect with navigable waterways.

We understand that "dead end" canals are also underway in a number of Florida developments, such as ITT Palm Coast, Palm Ridge subdivision on Sanibel Island near the "Ding" Darling Refuge Area, and at Ochopee, Fla., near an area that supports a colony of the endangered Cape Sable Sparrow.

The Izaak Walton League advises us that most of these canals are often 20 feet deep and dead end in a subdivision. The League states:

"As the subdivision grows and the land becomes saturated with wastes from the septic tanks, excess nutrients seep into the canals consuming the oxygen in the water. The problem is compounded because due to lack of tidal flushing no new water enters the canal from the adjacent bay or other waterways. The canal then becomes anaerobic. Because of the depths, sunlight cannot stimulate the growth of bottom vegetation and the end result is the presence of a blue-green algae, a biological soup in which diseases dangerous to human beings prosper."

The BSF&W made a similar statement in its January 18, 1973, letter to several Corps offices, including your own.

The Corps' General Counsel, Mr. E. Manning Seltzer, in a June 20, 1972, letter to a Florida assistant attorney general, said:

"It is my position that artificial canals are clearly subject to the regulatory authority exercised by the Corps of Engineers, either when the canals constitute navigable waters of the United States, or when through connections, the canals affect the course, condition, or capacity of the navigable waters."

(a) What steps has the Corps taken to exercise fully this "regulatory authority" in each of the above-cited cases of dead end canals?

(b) To what extent has the Corps informed the public and developers about the Corps' intention to exercise this authority?

(c) Please provide to us a copy of all letters, memoranda, notes, and other documents concerning the ITT Palm Coast development permit applications SAJSP (7200605).

(d) The present Corps notice concerning the ITT development notes that the applicant now "possesses" a permit for three connections to the Intracoastal Waterway and "has now submitted plans * * * for the entire canal system." It also states that the Florida Department of Pollution Control "has certified that there is reasonable assurance that the project" will meet applicable water quality standards.

(1) Does this certification apply to the entire canal system, or only to a portion thereof?

(2) Please explain to us what this application covers precisely.

(3) How many permits does ITT now possess for this development and what does each authorize ITT to do?

11. The Florida Audubon Society has informed us that the Corps has declined to prosecute persons responsible for illegal filling of Lake Villa in Broward County, Fla.

(a) Please explain to us the legal basis for the Corps' position, including a summary of the details concerning this matter.

(b) Please provide to us a copy of all letters, memoranda, and other documents concerning this matter.

12. Please provide to us the following:

(a) The number of Corps personnel assigned to the Florida area for regulatory work;

(b) The amount of funds available to the Corps in fiscal years 1970, 1971, 1972, and 1973, for such work in Florida and the amount requested for fiscal year 1974.

(c) Does the Corps, based on its current and estimated workload, have adequate personnel and funds to perform this work? Please explain.

13. Last October, one Corps field official wrote that "the pesky problem continues that, we, at field level are not allowed to recommend or suggest action to the local U.S. Attorneys. We are required to send cases up through Corps' channels and back out to the field through U.S. Justice Department channels."

(a) Please review all cases of violations of sections 10 and 13 of the 1899 law referred by each District Engineer office under your jurisdiction for civil or criminal action since this procedure was established in March 1972, and state:

(1) whether each violation was referred directly to the U.S. Attorney or through the Corps' General Counsel's office;

(2) concerning each case referred through the General Counsel's office, (a) the amount of time it took for the violation to reach the appropriate U.S. Attorney, and (b) whether the General Counsel's office refused to refer it to the U.S. Attorney's office for appropriate action. (If such refusal occurred, provide to us a copy of the General Counsel's reasons therefor.)

14. In enforcing the 1899 law, the Corps has determined administratively, according to one Corps official, that on the Pacific coast its jurisdiction extends to the "mean of the higher of the high waters or one foot above mean high water,"

and that on the Atlantic coast its jurisdiction extends to the "mean high water line." In a recent press release of the Jacksonville District office, reference is made to another term, namely, the "historic mean high water line." The statute itself does not establish these different artificial jurisdictional lines for each coast.

(a) Please advise us whether, and in what court cases, the Government has sought to maintain jurisdiction beyond the mean high water line of the Atlantic coast.

(b) Please advise us whether in Florida this artificial line has resulted in significant amounts of valuable tidal marsh areas being left unprotected by the 1899 law and subject to development. (Give examples.)

(c) Please indicate to us the reasons why the Corps has applied different jurisdictional lines under the same statute and thereby exercised a lesser degree of jurisdiction to protect the public's interest in navigable water areas.

15. On April 2, 1973, the Jacksonville District Engineer issued warning letters to 46 mosquito control districts in Peninsula, Florida. Those letters stated that dikes have been constructed seaward of the mean high water line for purposes of creating an impoundment for mosquito control; that in some cases the Florida Trustees of the Internal Improvement Fund have established bulkhead lines "which coincide" with these dikes; and that some dredging and filling is taking place below the "historic mean high water line" without Corps permits.

(a) Please provide to us the background information which caused the Corps to issue these warnings, including examples of such illegal activity.

(b) Please state whether permits or other authorizations have been issued for these dikes.

16. Please provide to us a current report of the activities and studies concerning the Cross-Florida Barge Canal which the Corps has undertaken since the President announced abandonment of this project, including a description of the actions taken to carry out the President's orders regarding this project.

17. Please include in your prepared testimony other comments, recommendations, and suggestions concerning the Corps' programs and enforcement efforts.

* * * * * * *

Sincerely,

HENRY S. REUSS,
Chairman,
Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

IN REPLY REFER TO
DAEN-GCZ-C

21 MAY 1973

Honorable Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Reuss:

This letter with inclosures furnishes the information requested by your Subcommittee for use in connection with hearings to be held in Miami, Florida on May 25, 26, 1973 on environmental problems in the State of Florida area. The designated Corps witnesses are available to answer any inquiries on the information presented, but in view of the many Corps programs discussed, and the hundreds of enforcement cases covered, the witnesses will not have all specific details, and can be expected to request permission to supplement the record after completion of the hearings with information not readily available.

The following responses are in a format which cites the 17 questions asked by you, or a summary thereof, with each followed by a discussion of the issue or matter.

1.(a) Do you issue letters of permission for work requiring a permit under Section 10?

1.(a) The Corps does issue letters of permission to work in navigable waters where the proposed work is minor, would not have a significant impact on environmental values, and should encounter no opposition. Examples of such work are private navigation aids, signs, mooring facilities, boat launching ramps, floating boat docks, temporary water intake structures, and similar minor work. Work involving dredging, filling, or requiring certification under Section 401 of the amended Federal Water Pollution Control Act would not be authorized by letters of permission.

1.(b) Are letters of permission issued in conformance with procedures recommended by your Subcommittee?

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1.(b) Under Corps regulations published for public comment in the Federal Register on May 10, 1973, the limited use of letters of permission would be continued. While public notice of an application for minor work is not prescribed, the District Engineer is required to coordinate with the concerned Federal and State fish and wildlife agencies and furnish a copy of any letter of permission issued to the Regional Director, Bureau of Sport Fisheries and Wildlife.

2.(a) Please furnish the details and status of cease and desist orders issued by the Corps of Engineers for a dredging project in Upper Goose Bayou near Panama City, Florida and the Kenner Reclamation Project at Wewahitchka, Florida.

2.(a)(1) Upper Goose Bayou

From approximately 1968 to 1972, extensive dredging and filling took place in and adjacent to Upper Goose Bayou, Bay County, Florida, for the purpose of constructing residential canal subdivisions. Five canals were dredged and connected to Upper Goose Bayou, a navigable waterway of the United States. Extensive filling, including filling of tidal creeks and wetlands, was undertaken adjacent to the canals. All of these activities were conducted without issuance of any Federal and State permits and without any inquiry from the developers whether any permits were required.

On April 4, 1973, a complaint (Civil Action No. 73-11-CIV-M) was filed by the U. S. Attorney in the Northern District of Florida. The filed complaint named Emerson Land Development, Inc., and Adolph F. Moellar, as party-defendants. Since this matter is now in litigation and under the control of the United States Attorney, further information should be released by him. However, a copy of the complaint is inclosed for your information, and marked "Incl. 1".

2.(a)(2) Kenner Reclamation Project

Sometime prior to 1972, Mr. Hamilton Kenner purchased some 33,000 acres of land from International Paper Company with the intention of converting the land from its non-profit status as wetlands, marshland, and/or scrub-covered land into a profitable operation as a soybean and cattle farm. To accomplish this, Mr. Kenner constructed a levee and inner-canal system in the southern portion of his land to lower the water table and pumped silt-laden waters from the marshes to the other side of the levee. An earthen structure was constructed across one of the waterways transversing the property to accomplish

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the same purpose. None of these operations was carried out under authority of the Department of the Army, Corps of Engineers.

Mr. Kenner was advised by the Corps of Engineers, Mobile District Office, that the structure across the waterway was in violation of Section 10 of the River and Harbor Act of 1899, which makes it unlawful to fill, alter or modify the course of any navigable water of the United States without a permit from the Department of the Army. Subsequently, the structure was removed.

Mr. Kenner was also advised that his levee system and pump discharges were in violation of (1) a Federal law which prohibits filling in navigable waters without prior consent of the Department of the Army and (2) a Federal law which prevents discharges of refuse into navigable waterways or their tributaries unless a permit is first obtained. Mr. Kenner, although denying that a permit for his pumped discharge was necessary, filed application for a permit. Mr. Kenner denied that his levee structure was in navigable waters or affected navigable waters and refused to apply for a permit for that structure. Mr. Kenner disputed the Corps of Engineers' authority, alleging that the land was privately owned and none of the waterways was navigable.

Within the next few weeks the Corps of Engineers accompanied by biologists from other Federal agencies will investigate the area for a determination of ordinary high water in those areas not influenced by tidal action.

When these investigations are completed and Mobile District Office has a concept of the physical limits of Federal regulatory jurisdiction, litigation will be recommended as appropriate.

As with the discussion above on Upper Goose Bayou, further information relates to an investigative file of an alleged violation of a criminal statute, and the United States Attorney would have to coordinate further disclosure.

2.(b) Inclosed in the prescribed tabular form is the requested listing of alleged violations of the River and Harbor Act of 1899 reported for the period July 1, 1970 to April 1, 1973, and is marked "Incl. 2". (In subcommittee files)

3.(a) Extent and Manner of Corps Maintenance Dredging

There are 75 authorized Federal navigation projects within the Jacksonville District. Forty-three of these are completed and

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21 of the completed projects have been maintained in the past five years as indicated on tabulation A. Dredging is performed by hydraulic pipeline, hopper and side casting dredges.

3.(b) How and Where are Materials Disposed Of?
Material removed by pipeline dredges is placed on upland disposal areas. Suitable material is used to renourish eroded beaches. Hopper dredged material is placed offshore. Sidecasting dredges are employed in two projects and material is placed in open water alongside the channel.

3.(c) Annual Cost and Recovery from Industrial Dischargers
Dredging costs are shown on tabulation B. The Corps has not recovered any of these costs from industrial or other dischargers.

4.(a) List all Corps beach erosion and shore protection projects currently underway in Florida or planned for fiscal years 1973 and 1974, and the cost of each to (1) the Corps, and (2) to others.

4.(a)		(1) Federal	(2) Non-Federal
	Advance Engineering and Design		
I.	Dade County, Fla., Beach Erosion Control and Hurricane Protection	$18,100,000	$30,574,000
II.	Duval County, Fla., Beach Erosion Control	6,950,000	5,440,000
	Construction		
I.	Brevard County, Fla., Beach Erosion Control (Construction scheduled in F.Y. 1974)	2,850,000	2,895,000
II.	Pinellas County, Fla., Beach Erosion Control	3,040,000	3,240,000
III.	Virginia Key-Key Biscayne, Fla., Beach Erosion Control	1,730,000	950,000
IV.	Broward County, Fla., Beach Erosion Control and Hillsboro Inlet Navigation Project (Reimbursement)	2,820,000	8,393,000
V.	Fort Pierce, Fla., Beach Erosion Control (Reimbursement)	967,000	903,000
VI.	Key West, Fla., Beach Erosion Control (Reimbursement)	872,000	968,000

Tabulation A
ANNUAL DREDGING QUANTITIES
FY 68 - FY 72

PROJECT	FY 1968		FY 1969		FY 1970		FY 1971		FY 1972	
AIWW - Fern to St. Johns										
Pipeline	32,906	CY								
Arecibo Hbr, P. R.										
Pipeline	233,614	CY								
Canaveral Hbr, Fla.										
Pipe line					157,792	CY	541,954	CY		
Hopp - Dredge	1,111,691	CY			1,782,614	CY	377,863	CY	716,952	CY
Charlotte Hbr, Fla.										
Hopper Dredge	217,475	CY	387,785	CY	89,109	CY	254,987	CY		
Clearwater Pass, Fla.										
Pipeline			72,854	CY						
Eau Gallie Hbr, Fla.										
Pipeline			36,024	CY						
Fernandina Hbr, Fla.										
Pipeline	179,443	CY								
Hopper Dredge	221,720	CY	292,127	CY	262,025	CY				
Ft. Myers Beach, Fla.										
Pipeline									110,028	CY
IWW - CR to AR										
Pipeline			49,076	CY						
IWW - J to M										
Pipeline	396,022	CY	77,971	CY	098,417	CY	93,278	CY	170,000	CY

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Tabulation attachment to answer to question 3(a)

PROJECT	FY 1968		FY 1969		FY 1970		FY 1971		FY 1972	
Jacksonville Hbr. Fla.										
Pipeline	486,693	CY			585,196	CY	31,466	CY	661,150	CY
Hopper Dredge	759,706	CY	189,939	CY					375,755	CY
Mayaguez Hbr. P. R.										
Hopper Dredge			134,152	CY						
Melbourne Hbr. Fla.										
Pipeline			48,258	CY						
Naples to Gordon Pass. Fla										
Pipeline	8,817	CY			181,373	CY				
Okeechobee Waterway, Fla										
Pipeline			77,922	CY	38,649	CY			35,004	CY
Palm Beach Hbr. Fla.										
Pipeline					61,949	CY			131,938	CY
Hopper Dredge			16,080	CY						
Ponce Hbr. P. R.										
Pipeline									98,616	CY
St. Augustine, Fla.										
Hopper Dredge							88,695	CY		
Side Casting Dredge							20,516	CY		
St. Lucie Inlet										
Pipeline	48,792	CY	29,076	CY						
Side Casting Dredge			8,773	CY	18,456	CY			18,429	CY

Tabulation attachment to answer to question 3(a)

PROJECT	FY 1968		FY 1969		FY 1970		FY 1971		FY 1972	
San Juan Hbr, P. R.										
Pipeline	589,727	CY								
Hopper Dredge			713,050	CY						
Tampa Hbr, Fla.										
Pipeline	696,959	CY							1,074,268	CY
Hopper Dredge	393,060	CY	717,587	CY			106,093	CY	661,492	CY

Attachment to answer to question 3(c)

Tabulation B
ANNUAL DREDGING COSTS
FY 68 - FY 72

PROJECT	FY 1968	FY 1969	FY 1970	FY 1971	FY 1972
AIWW - Fern to St. Johns	$ 54,866				
Arecibo Hbr, P. R.	242,000				
Canaveral Hbr, Fla.	321,594		$ 624,227	$ 208,184	$ 1,147,611
Charlotte Hbr, Fla.	88,814	$ 117,695	57,755	129,414	
Clearwater Pass, Fla.		62,255			
Eau Gallie Hbr, Fla.		26,512			
Fernandina Hbr, Fla.	138,162	59,215	85,772		79,263
Ft. Myers Beach, Fla.					
IWW - CR to AR		53,123			
IWW - J to H	306,697	80,630	416,224	98,073	379,686
Jacksonville Hbr, Fla.	567,067	108,254	1,061,559	15,983	1,035,772
Mayaguez Hbr, P. R.		69,959			
Melbourne Hbr, Fla.		32,629			
Naples to Gordon Pass	17,372		139,853		
Okeechobee Waterway, Fla		69,013	44,308		46,767
Palm Beach Hbr, Fla.		164,378	143,898		64,902
Ponce Harbor, P. R.					218,339
St. Augustine Inlet, Fla				170,477	
St. Lucie Inlet, Fla.	115,086	145,213	25,958		41,907
San Juan Hbr, Fla.	667,495	238,086		26,025	573,461
Tampa Hbr, Fla.	504,630	255,189			

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4.(b) State the extent to which beach erosion is a serious problem in the Florida area (identify each major problem area).

4.(c) State the measures needed to resolve the problem in each area, and the cost thereof to the Federal Government and others.

4.(b) and (c)

See following tabulation titled "Summary of Problem Beaches in Florida" in 2 sheets. A brief narrative of existing beach conditions follows:

Within the State of Florida there is approximately 6,300 miles of shoreline. About 5,000 miles of this consists of bay and estuary shoreline with the remaining 1,300 miles consisting of gulf and ocean shoreline. Of the approximate 1,300 miles of gulf-ocean shoreline about 800 miles consist of sandy beaches. Critical erosion is occurring along approximately 200 of those 800 miles. The worst problem areas exist along the highly developed southeast coast, central gulf coast, and at Panama City Beach located along the northwest gulf coast. Critical erosion of the bay-estuary beaches in Florida is occurring along approximately 85 miles of the total 580 miles of bay-estuary shoreline that has sandy beaches; the most severe problem area exists along the shores of Choctawhatchee Bay in northwest Florida.

5. Please provide to us

(a) A list of all authorized but uncompleted Corps projects for the Florida area, indicating:

(1) the type and purpose of each project, and its location;

(2) when each was authorized;

(3) the statutory authority for each;

(4) the estimated cost of each project at time of authorization;

(5) the current estimated cost of each project (if known);

(6) the current status of each project; and

(7) whether or not an environmental impact statement has been prepared for the project.

5. See following tabulation titled "Uncompleted Corps Projects -- Florida" in two sheets.

4. (b) & (c)

SUMMARY OF PROBLEM BEACHES IN FLORIDA

Shore Erosion Problem Area	Length of Problem Shore (miles)	Remedial Measures Needed: Initial Fill (CY)	Remedial Measures Needed: Annual Nourishment (CY)	Presently Estimated Cost: Initial Construction	Presently Estimated Cost: Annual Nourishment	Federal Share 1/: Initial Construction	Federal Share 1/: Annual Nourishment	Non-Federal Share: Initial Construction	Non-Federal Share: Annual Nourishment	Remarks
Nassau County	3.0	---	---	---	---	---	---	---	---	Corps study in 1960 unfavorable; restudy authorized FY-72 but not yet funded.
Duval County	10.0 2/	3,750,000	260,000	$6,320,000	$607,000	$3,594,700	$350,000	$2,725,300	$257,000	Preconstruction planning to begin in FY-74.
St. Johns County	6.0	---	---	---	---	---	---	---	---	Corps study in 1965 favorable but not supported locally; locals considering restudy request.
Flagler County	3.0	---	---	---	---	---	---	---	---	No study yet requested.
Volusia County	1.0	---	---	---	---	---	---	---	---	Beach study authorized in FY-70 but not yet funded.
Brevard County	4.8 2/ 10.2	1,591,000	308,000	3,591,000	186,900	1,773,000	93,450	1,818,000	93,450	Preconstruction planning for 2.8-mile city of Cape Canaveral segment to be completed in FY-74.
Indian River County	6.0	---	---	---	---	---	---	---	---	Beach study underway.
St. Lucie County	1.3 2/	451,400	90,000	621,300	124,000	321,200	64,100	300,100	59,900	Actual quantity and cost for initial project fill completed by locals in July 1971.
Martin County	6.0	---	---	---	---	---	---	---	---	Unfavorable beach study completed in FY-69; restudy request being considered by locals.
Palm Beach County	12.8 2/	5,500,000	194,000	4,575,000	290,500	301,000	19,900	4,274,000	270,600	Locals awarded bid for initial construction of 2.7-mile Delray Beach segment 24 April 1973.
Palm Beach Island	15.6	---	---	---	---	---	---	---	---	Project inactive due to lack of local support.
Broward County	8.9 2/	3,139,000	310,000	6,120,000	508,000	1,860,000	96,000	4,260,000	412,000	3-mile Pompano Beach segment completed by locals in October 1970.
Dade County	10.5 2/ 5.3	14,810,000	211,000	42,000,000	668,600	17,100,000	133,500	24,900,000	535,100	Preconstruction planning to begin in FY-74. Bal Harbour Village officials' plan to begin this year initial construction of 0.85-mile project segment.
Virginia Key-Key Biscayne	3.7 2/	---	85,000	---	140,000	---	98,000	---	42,000	Initial project nourishment completed in July 1969. First nourishment operations, including provision of 13 groins (initial cost estimated at $336,000; $235,000 of which is federal), now underway.
Monroe County (Key West)	1.1 2/	83,300(rock) 136,000(sand)	30,000	1,176,000	66,400	550,000	33,200	626,000	33,200	Locals completed westerly half of initial project fill in 1969.

Tabulation attachment to answer to questions 4(b) and (c)

4. (b) & (c)

SUMMARY OF PROBLEM BEACHES IN FLORIDA--Continued

Shore Erosion Problem Area	Length of Problem Shore (miles)	Renourishment Measures Needed: Initial Fill (CY)	Renourishment Measures Needed: Annual Nourishment (CY)	Presently Estimated Cost: Initial Construction	Presently Estimated Cost: Annual Nourishment	Federal Share 1/: Initial Construction	Federal Share 1/: Annual Nourishment	Non-Federal Share: Initial Construction	Non-Federal Share: Annual Nourishment	Remarks
Collier County	4.0	---	---	---	---	---	---	---	---	Beach study to be completed in FY-74.
Lee County	12.4 2/	2,825,000	260,000	$4,555,000	$333,500	$ 859,000	$ 15,100	$3,696,000	$318,400	Includes revetment and groin for south end of Gasparilla Island and groin for northerly end of Estero Island.
Charlotte County	5.0	---	---	---	---	---	---	---	---	Beach study initiated in FY-73.
Sarasota County	1.2 2/ 3.2	636,000	67,000	798,000	100,200	284,000	36,400	$514,000	63,800	Northerly 0.6-mile of project provided by locals in May 1970. Beach study of remainder of gulf shore of Sarasota County delayed for requested indication of local support.
Manatee County	8.0	---	---	---	---	---	---	---	---	Report on completed beach study being coordinated by Secretary of Army prior to submission through O.M.B. to Congress.
Pinellas County	13.0 2/	3,465,000	130,000	4,048,000	223,200	347,000	56,400	3,701,000	166,600	1.7-mile initial project segment complete on Treasure Island July 1969. Emergency III now underway with O.L.P. funds for 3.8-mile reach on Sand Key, due to detrimental effects of Hurricane Agnes in June 1972.
Mullet Key	1.5 2/	283,000	30,000	698,000	45,900	488,600	32,100	209,400	13,800	Includes revetment and groin at southwest tip of Mullet Key; initial project completed in March 1973.
		(Generally there are no significant sandy beaches between Pinellas and Wakulla Counties.)								
Wakulla County	0.0									There are no beach erosion and shore protection projects underway and none are planned for FY-73 or FY-74 for the area westward from Wakulla County.
Franklin County	52.8									
Gulf County	1.6									
Bay County	24.8									
Walton County	8.0									
Okaloosa County	13.3									
Santa Rosa County	8.8									
Escambia County	16.5									

NOTES: 1/ Federal share indicated based on existing beach ownership; increased Federal aid (up to 50%) could be realized by placing beach to be improved in public ownership with adequate public access and parking.

2/ Denotes Federally authorized beach project area.

Tabulation attachment to answer to question 5(a)

5. (a)

UNCOMPLETED CORPS PROJECTS -- FLORIDA
(Funds in Thousands)

Type and Purpose	Project	Location	Authorized	Statutory Authority	Est. Cost & Time of Authorization Fed.	Non-Fed.	Current Est. Cost Fed.	Non-Fed.	Current Status	E.I.S. Prepared
BE	Brevard County	On the east coast at the approximate midpoint of the peninsula and at the city of Cape Canaveral, Fla.	1968	PL 90-483	$ 680.0	$ 683.0	$ 2,850.0	$ 2,895.0	Construction not started.	Yes
BE-NAV	Broward County & Hillsboro Inlet	On the lower east coast about 30 miles north of Miami, Fla.	1965	PL 89-298	1,093.0	4,485.0	2,820.0	8,393.0	Construction underway.	No
NAV	Canaveral Harbor	Just south of Cape Kennedy, approximately midpoint of the east coast of Fla.	1962	PL 87-874	5,076.0	810.0	11,700.0	1,119.0	Construction underway.	No
FC	Central and Southern Fla.	The project is located in the southeasterly 18 counties of the State. Principal areas are Upper St. Johns River Basin, Kissimmee River Basin, Lake Okeechobee-Everglades Area, and East Coast-Everglades Area.	1948 1954 1960 1962 1965 1968 1970	PL 80-858 PL 83-780 PL 86-645 PL 87-874 PL 89-298 PL 90-483 Sec. 201, PL 89-298	275,495.0	84,383.0	441,000.0	187,500.0	Construction underway.	No
BE	Dade County	On the southeast coast of Florida. The Dade County shore is occupied by Miami Beach and a number of smaller communities.	1968	PL 90-483	11,805.0	17,675.0	18,100.0	30,574.0	Planning not started.	No
BE	Duval County	On the upper east coast of Florida. The project lies between St. Johns River and the Duval-St. Johns County line.	1965	PL 89-298	2,266.0	1,874.0	6,950.0	5,440.0	Planning not started.	No
BE	Ft. Pierce	On the east coast of Florida, 213 miles south of the entrance of Jacksonville Harbor.	1965	PL 89-298	220.0	205.0	967.0	903.0	Construction underway.	No
FC	Four River Basins	The project area covers about 6,000 square miles within 15 counties in central and southwest peninsular Florida.	1962	PL 87-874	57,760.0	10,700.0	81,200.0	53,400.0	Construction underway.	No
NAV	GIWW, St. Marks to Tampa Bay	The waterway extends from the mouth of St. Marks River to the mouth of Anclote River, Fla., thence along the alinement of the existing project to Tampa Bay, following in general a series of partially protected inside waterways along the gulf coast of Florida.	1968	PL 90-483	89,252.0	14,450.0	125,000.0	20,300.0	Planning not started.	No
BE-HP	Hillsborough Bay Hurricane Protection	Located in the northeast extension of Tampa Bay on the west-central coast of the Florida peninsula. The northernmost point of the bay, at the city of Tampa, is about 30 miles from the Gulf of Mexico.	1968	PL 90-483	9,909.0	3,925.0	13,900.0	6,055.0	Planning not started.	No
NAV	Jacksonville Harbor	St. Johns River, Duval County, in northeast Florida.	1965	PL 89-298	8,504.0	326.0	34,500.0	2,819.0	Construction underway.	Yes
BE	Key West	On the south side of the island of Key West.	1960	PL 86-645	231.0	462.0	872.0	968.0	Construction underway.	No
BE	Lee County	On the lower gulf coast of Florida, about 90 miles south of the entrance to Tampa Bay.	1970	Sec. 201, PL 89-298	608.0	2,642.0	1,010.0	6,880.0	Planning not started.	No
BE	Lido Key	On the west coast of Florida near the central portion of the peninsula, about 45 miles south of Tampa.	1970	PL 91-611	340.0	434.0	650.0	1,170.0	Planning not started.	No

-5. (a)

UNCOMPLETED CORPS PROJECTS -- FLORIDA--Continued
(Funds in Thousands)

Type and Purpose	Project	Location	Authorized	Statutory Authority	Est. Cost & Time of Authorization Fed.	Non-Fed.	Current Est. Cost Fed.	Non-Fed.	Current Status	E.I.S. Prepared
NAV	Miami Harbor	Located in Biscayne Bay, 11 miles south of Palm Beach Harbor.	1968	PL 90-483	$ 6,416.0	$ 709.0	$ 14,400.0	$ 8,140.0	Construction underway.	Yes
BF	Mullet Key	On the southerly end of a group of islands on the west coast of Florida immediately north of the entrance to Tampa Harbor.	1966	PL 89-789	286.0	123.0	889.0	381.0	Construction underway.	Yes
BE	Palm Beach County	On the east coast of Florida about 70 miles north of Miami.	1962	PL 87-874	129.0	2,583.0	500.0	6,960.0	Planning not started.	No
FC	Phillippi Creek Basin	Located in southwest peninsular Florida about 50 miles south of Tampa.	1965	PL 89-298	4,592.0	3,263.0	6,910.0	4,830.0	Planning not started.	No
BE	Pinellas County	Located along the west-central coast of Florida covering about 25 miles of the island beaches in the Clearwater-St. Petersburg area.	1966	PL 89-789	116.0	2,924.0	2,900.0	3,360.0	Construction underway.	No
NAV	Tampa Harbor	About midway along the gulf coast of Florida in Tampa and Hillsborough Bays.	1970	PL 91-611	101,920.0	880.0	106,000.0	600.0	Planning underway.	Yes
BE	Virginia Key-Key Biscayne	Virginia Key and Key Biscayne are barrier islands located in Dade County, Fla., near Miami.	1962	PL 87-874	220.0	1,035.0	1,730.0	950.0	Construction underway.	No
NAV	Panama City Harbor	Located at Panama City, Fla.	1972	Sec. 201, PL 89-298	2,206.0	104.0	2,649.0	121.0	Planning not started.	Yes

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Honorable Henry S. Reuss

5.(b) A list of all small boat projects currently under construction or planned for fiscal years 1973 or 1974 in Florida, showing:

(1) the location and purpose of the project; and

(2) the cost of the project to the Corps and to others.

5.(b)(1) and (2) --

	Project	Location	Purpose
1.	Okeechobee Waterway, Fla. - Modification to existing project.	Near Ft. Myers in Lee County, Fla.	Channel enlargement for navigation.

Federal	Non-Federal
$298,000	$2,600

	Project	Location	Purpose
2.	Ft. Myers Beach, Fla. - Modification to existing project.	Ft. Myers Beach in Lee County, Fla.	Extension of navigation channel.

Federal	Non-Federal
$66,000	$1,000

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Honorable Henry S. Reuss

6. We understand that the Corps is undertaking at least oneUrban Studies Program in Florida.

6.(a) Please identify all Corps Urban Studies Program planned for the Florida area, the cost to the Corps, and the Statutory basis for each.

6.(a) The Jacksonville District has two authorized, but currently not funded, urban studies. One is for Metropolitan Miami, West Palm Beach, Ft. Lauderdale - Hollywood, and Vicinity, Florida (formerly Southern Florida). Total estimated cost is $3,500,000, of which $275,000 would be non-Federal effort (25% of $1,100,000 estimated for wastewater portion; as required by current policy). The study was authorized by two U.S. Senate Public Works Committee Resolutions, 26 May 1970 and 4 April 1972. $260,000 is included in the President's budget to initiate this study in FY-1974. The other is for Jacksonville Metropolitan Area, Florida. Authorized by Senate Public Works Resolution dated 31 October 1972. Total estimated cost is $1,500,000. Non-Federal share has not yet been identified. Initiation of this study during FY-1974 is not anticipated.

The Mobile District has underway preparation of a Plan of Study for an urban study covering 16 counties in the panhandle area of Florida. The Committee on Public Works of the United States Senate in a resolution adopted 19 June 1972 authorized an urban study for an 11-county area in northwest Florida. The Committee on 12 March 1973 adopted a revised resolution expanding the study area by 5 counties. The total estimated cost of the study is $1,500,000, of which $400,000 would be non-Federal effort. $125,000 was available in FY-1973 and $250,000 is included in the President's budget to continue this study in FY-1974.

6.(b) Please describe the purpose of each and list all participating agencies.

6.(b) The purpose of each study is to assist State and local governments in orderly planning to meet water resource related urban problems and needs and to develop the plans so that they will support other community goals. The first phase of each study, after receipt of initial funds, is the preparation of the Plan of Study (P.O.S.). During that time, goals and objectives will be established in cooperation with State and local governments and other Federal agencies. Each study will be tailored to the needs of the study area, but could consider any or all of the following:

Flood control and flood plain management.
Municipal and industrial water supply.
Wastewater management.

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Bank and channel stabilization.
Restoration and protection of lakes, ocean and estuarine areas.
Recreational facilities.
Regional harbor and waterway development.

During the P.O.S. stage (which does not begin until initial funds are received), all appropriate agencies will be contacted and work tasks will be identified and coordinated. It is anticipated that the Southern Florida Study and the Jacksonville Metropolitan Area Study will each involve, but not be limited to, the following agencies.

Federal: Environmental Protection Agency, Dept. of Interior - designated agencies, Dept. of Agriculture - designated agencies.

State: Division of Planning, Dept. of Natural Resources, Dept. of Pollution Control, Game and Fish Commission.

Regional and local: Planning Councils, Water Management Districts, County Planning Boards, City Planning Boards.

As noted above, the Plan of Study for the Northwest Florida Urban Study has not been completed. However, it is expected that the following Federal Agencies will participate: Soil Conservation Service, Forest Service, Farmers Home Administration, Economic Research Service, National Oceanic and Atmospheric Administration, National Ocean Survey, Bureau of Economic Analysis, Public Health Service, Department of Housing and Urban Development, Bureau of Mines, Bureau of Outdoor Recreation, Bureau of Sports Fisheries and Wildlife, U. S. Geological Survey, National Park Service, Environmental Protection Agency, and the Federal Power Commission. The participating Florida agencies include the Departments of Administration, Air and Water Pollution Control, Community Affairs, Natural Resources, and Transportation, the Coastal Coordinating Council, Trustees of the Internal Improvement Trust Fund, and the Florida Game and Fish Commission. In addition to the Federal and State agencies the following regional and local agencies are expected to participate: The Escambia-Santa Rosa Regional Planning Council, the Northwest Florida Development Council and Economic Development District, the 16 counties in the study area and the principle cities, i.e., Pensacola, Fort Walton Beach, Panama City, Tallahassee, Bristol, Blountstown, Quincy, Chattahoochee, Marianna, DeFuniak Springs, Crestview, and Milton.

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Honorable Henry S. Reuss

6.(c) Please explain why, in the case of the Northwest Florida Urban Study covering an 11-county area in the Florida panhandle, no funds have been transferred to the Bureau of Sport Fisheries and Wildlife to participate in the study.

6.(c) The Northwest Florida Urban Study covers a 16-county area (see 6(a) above). Funds allotted in FY-1973 are sufficient only for preparation of the Plan of Study. If after initiation of the study proper the Bureau of Sports Fisheries and Wildlife are requested to provide services over and above those provided in normal coordination agreements funds will be made available to the Bureau.

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7(a) What is the cost "of exercise and jurisdiction in all navigable waters"?

7(a) The Corps of Engineers has recently issued detailed guidance to its field offices concerning the exercise of jurisdiction over rivers, ditches, artificial canals, and other waterways. Published in Volume 37 of the Federal Register on September 9, 1972 beginning at Page 18289 (with an editorial correction on September 16, 1972 at Page 18911), the new regulation defines in detail the term "navigable waters of the United States" as used in Section 10 of the Rivers and Harbors Act of March 3, 1899 in order to permit a uniform interpretation of the limits of Corps jurisdiction under Section 10. This new regulation clearly indicates that "navigable waters of the United States" are those waters which are subject to the ebb and flow of the tide or which are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce. Jurisdiction over these waters extends to the mean high water mark or ordinary high water mark, respectively, of these waterbodies, and with respect to waters falling within the interstate commerce test, to the point at the upper limits of those waters (the headwaters) where the waterbody could no longer support commerce and could, accordingly, be regarded as non-navigable. In order to insure uniform application of this clarified definition of navigable waters of the United States, all Corps field offices were instructed, following publication of this revised regulation, to reexamine all waterbodies within their jurisdiction to determine which fall under the purview of Section 10.

Recent passage of the Federal Water Pollution Control Act of 1972 placed permit responsibility for the discharge of dredged or fill material into navigable waters with the Corps of Engineers. That Act defines "navigable waters" to mean the "waters of the United States including the territorial seas." While the Corps does not have benefit of any judicial interpretation of the meaning of this new term in order to precisely define its jurisdictional limits under this new Act, legislative history indicates that it should be given the "broadest possible Constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes." (S. Rep. No. 92-1236 at p. 144). Thus, it is possible, presuming judicial concurrence thereto, that the term "navigable waters" could bring many waters within the purview of Corps jurisdiction for purposes of regulating the discharge of dredged or fill material under Section 404 of the Federal Water Pollution Control Act which have heretofore not fallen within the legal definition of "navigable waters of the United States" as implemented by the revised Corps regulatory definition of September 9, 1972.

The cost of exercising jurisdiction over these waterbodies cannot be determined with any degree of accuracy. As a preliminary matter, considerable expense may be incurred by the Corps in performing historical research and/or engineering surveys of a particular waterbody to determine whether

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it falls within the definition of a "navigable water of the United States". In those cases where the proposed activity in the waterway is minor in nature, uncontroversial, and will not have a significant impact on the environment, the cost to process the permit application could range from $100 to $500 including the issuance of a public notice and the coordination with appropriate Federal, State and local agencies. Processing of controversial permit applications could cost several thousand dollars particularly when public meetings and/or public hearings are necessitated.

7(b) What is the policy of the Corps of Engineers in this respect?

7(b) In order to insure more uniform guidance to Corps field offices in the exercise of Corps regulatory authorities, on May 10, 1973, the Corps published proposed revised regulations in the Federal Register for the processing of Corps permits for activities in navigable waters and ocean waters. With respect to permits to be issued under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Federal Water Pollution Control Act of 1972, this new regulation specifies the respective jurisdictional limitations of Corps regulatory responsibility under both Acts by incorporating the definition of "navigable waters of the United States" as set forth in the revised regulation of September 9, 1972 and the definition of "navigable waters" as defined in the Federal Water Pollution Control Act of 1972. The regulation makes no exceptions for the processing of permit applications for activities within these jurisdictional confines. It specifically requires Department of Army authorizations for all structures or work in the navigable waters of the United States (except bridges and causeways which are authorized by the U. S. Coast Guard), and for the discharge of dredged or fill material into navigable waters. Thus, while it is recognized that past practices of Corps field offices in interpreting their permit authority and responsibility may have been divergent, it is anticipated that this revised regulation will provide uniform guidance to the Corps field offices as to their responsibilities under Corps permitting authorities, including the requirement for the processing of permit applications for all structures or work in navigable waters of the United States and for all discharges of dredged or fill material into navigable waters even though the size or type of the structure or activity and/or the waterbody in which it will be placed or occur may be regarded as only minor or insignificant.

8(a) It is our understanding that the New Orleans District Office issues so-called "Letters of No Objection." Please explain what these are and under what circumstances they are issued?

8(a). Letters of no objection are issued by the New Orleans District for the following types of action:

1. Seismic surveys not involving use of explosives.
2. Temporary facilities for collection of water quality data.
3. Dredging in connection with construction of bridges under permits issued by the U.S. Coast Guard.
4. Extensions of private canal systems for petroleum production activities.
5. Temporary structures used in connection with construction of permitted facilities when the temporary structures do not adversely affect the public interest.
6. Work outside navigable waterways when such letters are specifically requested.
7. Addition of additional facilities to existing structures when such additions do not change the size or configuration of the structures.
8. Work in non-navigable waterways when specific requests for such letters are made.
9. Temporary facilities for unloading of construction materials.

In all cases when applications for letters of no objection are received, the applicants are advised or required to obtain the approval of appropriate State or local agencies. In addition, such requests are coordinated with EPA and/or the Bureau of Sport Fisheries and Wildlife when it is deemed these agencies have an interest in the matter.

8(b) Are such letters issued in the Florida area?

8(b) The Jacksonville and Mobile Districts report that they issue letters of no objection under the following circumstances:

(1) In cases where the work would be entirely landward of the mean high waterline. This is usually as a result of a specific request for such a letter.

(2) Work of a temporary nature or for a structure that would have no ill effect on the public interest. Such a letter was recently issued indicating no objection to the temporary installation of a 2-inch plastic pipe to withdraw salt water from along the Intracoastal Waterway bulkhead to use in tests of experimental equipment to produce chlorine gas for sewage treatment. Another was written for a crib structure to withdraw water from the Gulf for use in jetting concrete bulkhead panels; the structure was needed to hold the hose off the bottom and was needed for a period of only a few days.

(3) Work of emergency repair nature such as for minor excavation to remove a vessel which has gone aground or where electric or communication lines have been damaged and where there would be no deviation from the plans of the Department of the Army permit originally authorizing the work at an adjacent location.

(4) Seismic surveys.

(5) Temporary water measurement gages or testing devices.

(6) In all cases, except the first, appropriate conditions or other coordination requirements are included in the letter of no objection, and are the same as letters of permission, and will be identified as such in the future.

It should be noted that neither our current nor our proposed regulations prescribe or authorize the use of "letters of no objection". Historically the practice seems to have arisen for dumping in the ocean beyond the territorial sea, but the Marine Protection, Research, and Sanctuaries Act of 1972 has resolved this issue and the use of such letters will be stopped.

9. To what extent does the Corps provide an opportunity under the Fish and Wildlife Coordination Act for the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration to review permit applications for the Outer Continental Shelf area?

9. The two agencies named receive as a matter of course copies of public notices issued for applications seeking authority to construct artificial islands or structures on the Outer Continental Shelf. However, since the Department of Interior determines which exploration and exploitation activities on the Shelf are in the public interest, the Department of the Army bases its determination on the effect of the work on navigation and national security. See 33 Code of Federal Regulations 209.120(d)

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10. Dead-end canals are underway in a number of Florida developments, such as ITT Palm Coast, Palm Ridge Subdivision on Sanibel Island near the "Ding" Darling Refuge Area, and at Ochopee, Florida, near an area that supports a colony of the endangered Cape Sable Sparrow.

(a) What steps has the Corps taken to exercise "regulatory authority" in each of the above-cited cases of dead-end canals?

(1) ITT Palm Coast: The Corps issued four dredge permits to the ITT Levitt Development Corporation, now known as the ITT Community Development Corporation, for connections of upland canals to the Intracoastal Waterway (plug removals). The first of these was issued in February of 1970 and the other three in December of 1970. The application drawings did not show the extent of the upland canals. The public notices did not generate any substantive objections and the permits were routinely issued. No objections were received from the Department of the Interior or from any State agencies. Three of the connections were certified in accordance with Public Law 91-224. The other was issued prior to the requirement for certification. Dredging operations commenced in May 1970. In August of 1971 an inspection by the Corps revealed that the dredging in one of the upland canals was causing a localized turbidity problem. This prompted the issuance of a cease and desist order on 11 August 1971 directing that all operations be stopped until adequate plans could be developed to reduce the sediment load in the waste water returning to the canal from the spoil area. The work was stopped and the firm submitted plans for eliminating the turbidity problems which were approved by this office. As a result of this incident, it was learned that the developer had excavated the Club House Waterway by dredging in from the Intracoastal Waterway instead of by completing the upland excavation and then removing the plug. We, therefore, advised the firm that the canal now connected to the Intracoastal Waterway is considered to be navigable waters of the United States and subject to our regulatory jurisdiction and that no further extensions or connections could be made without a permit. The Department of Pollution Control of the State of Florida was also taking an interest in the work at that same time and they told the firm that it must obtain an operating permit for the interior canal system. After the Department of Pollution Control had certified the connection of nine canals to the Club House Waterway in June of 1972, the firm applied to us for a permit covering these nine connections. Because of the interest that was continuing to increase regarding this project and regarding residential canal systems in general, we asked the applicant to revise his drawings to show the entire system of canals including not only those to be connected to the Club House Waterway but the two systems to be connected to the Intracoastal Waterway north of the Club House Waterway for which permits had already been issued. (The remaining canal connection permit issued in 1970 was for a canal located south of the St. Joe Canal; however, ITT has advised that no plans have been developed

for any upland canal system at this location). The public notice for the entire canal system was issued on 19 September 1972. To date, no decision has been made on the application.

(2) Forrest Harmon development near Ochopee, Collier County, Florida: The Assistant United States Attorney, George Kokus, called the District Office Counsel on 20 September 1972 advising him that he had received a report from the Fish and Wildlife Service in Vero Beach of illegal dredging near Ochopee, Florida. A field investigation was made on that date by the Miami Resident Office. The investigation revealed that on property owned by Mr. Forrest Harmon there was an existing canal (Snook Canal) which had been dug approximately 10 years ago by a prior land owner which connected to the Gulf of Mexico. Several other canals which connected to the main canal had been dug by Mr. Harmon three and five years ago. At the time, there was a canal under construction (Tarpon Canal) which was separated by a plug from the main canal (Snook Canal). Mr. Harmon was advised by the Corps representative that he should not remove the plug without first obtaining a Corps permit.

By letter dated 22 September 1972, Mr. Kokus, Assistant United States Attorney, requested certain additional information which is as follows:

(a) A survey which would show if the land was below the mean high water.

(b) An investigation to determine the present ownership of the land.

(c) A determination if the unplugging of the canal would effectively drain the marshlands in the area.

A meeting with U. S. Geological Survey hydrologist and surveyor revealed that there are no tide gages in the area nor records of water elevations of seasonal wetlands such as the Harmon property. Salinity data were also not available.

At the request of the Department of the Interior, a teletype was sent to Mr. Harmon on 21 September 1971 directing him to cease all work on canals which would connect to the canal which leads to navigable waters. Mr. Harmon answered by letter dated 29 September 1972 stating that the work being done is on his own property and is not connected to navigable waters. By letter dated 17 April 1973, the Department of the Interior requested that the Corps obtain certain information from the developer. Our letter dated 24 April 1973 to Mr. Harmon requested that he furnish the information to Department of the Interior by 18 May 1973 and again warned him of the permit requirements prior to connecting to navigable waters. Additionally, we advised him that costly investments in upland construction will not be considered as a basis for routinely granting Federal permits.

The above summarizes what has taken place on the Harmon case. The first Corps field investigation was conducted on 20 September 1972 and the cease order sent on 21 September 1972. The second Corps investigation made in November 1972 did not reveal that further work had been performed. The Corps letter of 24 April 1973 included the standard warnings which are given to people working on upland canals which advises them:

(a) They must apply for and obtain a Department of the Army permit prior to connecting to navigable waters.

(b) Costly investments of upland canals will not be considered as a basis for routinely granting a permit.

(c) They are responsible if the plugs are removed by forces of nature.

(d) Requirement to obtain permit prior to advertising sale of any lots as per the "Interstate Land Sales Full Disclosure Act."

(3) Palm Ridge Subdivision on Sanibel Island near the "Ding" Darling Refuge Area: On 25 February 1971, the United States Department of the Interior acquired title by Declaration of Taking to certain property located on Sanibel Island which was owned by Mr. G. T. Martin. The former owner had dug a 40-foot canal from his Palm Ridge Subdivision to very near Tarpon Bay.

Sometime in June 1971, an opening into Tarpon Bay was made and a canal dug 90 feet into the bay. All excavated material was hauled away. The Department of the Interior wrote the United States Attorney on 9 July 1971 complaining of (1) unauthorized entry on Federal lands, and (2) apparent illegal removal of Federal property. The United States Attorney requested that the Corps conduct an investigation into the illegal dredging operation. An on-site investigation by the Corps did not establish how the canal was constructed nor by whom. However, the matter was forwarded to the United States Attorney recommending that Mr. G. T. Martin and Mr. Dave Wooster be prosecuted for violation of 33 U.S.C. 403 and that an injunction be sought to order the defendants to restore the area to its original upland configuration. However, on 7 June 1972, the United States Attorney informed us that there was little likelihood of a conviction if prosecution were brought. Additionally, the violation was small and remedy had been accomplished. The remedy was the fact that the Department of the Interior had placed a plug across the canal with an equalizer pipe.

By letter dated 15 December 1972, the Department of the Interior advised us of the following:

"We have recently been advised that an application for the Palm Ridge Subdivision has not been filed with the Office of Interstate Land

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Sales Registration, U. S. Department of Housing and Urban Development, although some lots have been sold. Therefore, the developer may be in violation of the Interstate Land Sales Full Disclosure Act (Public Law 90-448). In addition, a portion of the spoil materials excavated from canal construction were deposited in such a manner as to be in apparent violation of Section 13 of the River and Harbor Act of 1899 (33 U.S.C. 407).

"In view of the biological significance of the area and the numerous violations of Federal and State laws, the Bureau of Sport Fisheries and Wildlife recommends that your office take the following action with regard to the Palm Ridge Subdivision:

"1. Issue a cease and desist order to stop all project operations.

"2. Require the developer to install a plug in the mouth of the illegally constructed canal that will permanently maintain the separation between the canal and Tarpon Bay.

"3. Require the developer to restore the canal and the excavated portion of Tarpon Bay to preconstruction conditions.

"4. Advise this office and the U. S. Attorney's office, Tampa, Florida, within 7 days of the actions taken by your office.

"By copy of this letter, we are also requesting that appropriate action be taken by the Environmental Protection Agency concerning the apparent violation of Section 13 of the River and Harbor Act of 1899, and the Office of Interstate Land Sales with regard to the possible violation of the Interstate Land Sales Full Disclosure Act (Public Law 90-448)."

A site inspection made on 4 January 1973 revealed that apparently no further work had been performed on the upland canal nor the boat basin since the inspection made on 26 July 1971. The earth plug with 36-inch invert was still in place and in relatively good condition.

In view of the fact that no work was underway, we did not issue a cease and desist order as recommended by the Department of the Interior, nor did we require a plug to be installed since there was already one in existence. Concerning the recommendation that the developer be required to restore the canal, the matter had been referred in 1971 to the United States Attorney who had declined to prosecute the case. Since no new developments had occurred, we saw no basis for him changing his position.

(b) To what extent has the Corps informed the public and developers about the Corps' intention to exercise this authority?

It has been the policy of the Jacksonville District in recent years to use every possible means of communications to get across to the public and to developers the necessity of obtaining Federal and State

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permits before proceeding with construction below the mean high water line.

During the past five years or more the greater emphasis on environmental concern in dredging and filling activities has been a daily subject in the Florida news media.

In addition, the Jacksonville District, both in coordination with the State Internal Improvement Board, and individually, has made numerous efforts to emphasize the advance requirement for permits, the greater environmental concern and the increased difficulty in obtaining permits because of environmental matters.

In June 1969 letters were sent to all known dredge and fill contractors, to architects and to engineers and developers advising them of permit requirements under Federal law; again in September 1970, contractors and developers were cautioned about permit requirements and the liability of the contractor who performs work without a permit or who exceeds the permit limits; in May 1971 the Federal permit requirements were emphasized in letters to contractors and engineers; in October 1971 warnings were issued to contractors and dvelopers citing penalties for failure to obtain proper permits in advance of starting work below the mean high water line; and in December 1972 a separate notice was mailed to developers and contractors concerning the Corps permit authority as it relates to man-made borrow canals of Lake Okeechobee.

On 7 October 1971 the Jacksonville District Engineer and the Director of the IIF Board jointly issued a press release re-emphasizing the permit requirements. This news release was sent to some 400 newspapers, radio and TV stations, agencies and individuals in Florida. It was also sent to the Florida Realtors magazine, the Florida Builders magazine and was widely used by the media. At about the same time letters, under the District Engineer's signature, were sent to every known dredging contractor, architect and engineer in Florida calling their special attention to the permit requirements and the need to advise their clients of the permit requirements. The letter also cited that the contractor or engineering firm could be held liable for violation of this feature of the 1899 law, even though they were working for a developer.

On every occasion possible when an indictment or conviction was obtained in Federal court for violation of the dredge and fill permit requirements, the Corps through a cooperative arrangement with the Assistant U. S. Attorneys, issued news releases or telephoned affected news media to advise them of the court action in order to use the occasion as a vehicle to reemphasize the advance permit requirement.

News media representatives were so cognizant of the Corps stepped-up campaign to eliminate illegal dredge and fill activities that many reporters individually have frequently telephoned our office to report a suspected violation, or to ask that the Corps check its records to determine if a permit had been issued. Citizen vigilance for illegal dredge and fill has certainly increased as a result of these activities.

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In August and October 1972 a revised and simplified booklet was issued which explains in layman's terms exactly why a Federal permit is required and how to apply for such a permit. Thousands of these pamphlets have been mailed to citizens, contractors and engineers.

In all cases where a permit application is received, copies of the public notice are sent to area newspapers, radio and TV stations as well as to a broad spectrum of public officials and individuals. Many of the staff have spoken at civic meetings, seminars, local government meetings, etc., on the permit program and the expanding jurisdiction and public interest aspects.

Thus, at about six-month intervals since 1969 a continuing system of notification has been instituted to contractors, developers and realtors concerning the Federal permit requirement. In addition, public notices concerning applications get widely publicized in the news media. Our files concerning dredge and fill applications particularly reflect extensive public understanding and knowledge about the stringent permit requirements. Publicizing indictments and/or convictions of violators of the permit procedure which have been instituted by the Corps through the Federal court serves to keep contractors and the public apprised of the penalties for failure to comply with the law.

A copy of newspaper clippings is included in packet marked "Incl. 3" to show the excellent publicity being given to the Corps permit program and environmental concern.

(In Administrative files)

NOTE: Question 10(b) is prefaced by testimony of others concerning objections to dead-end canals, primarily. Our public notices cited above do not address themselves to "dead-end" canals per se, but are focused, instead, on advance authority needed before construction below mean high water is started. The Corps depends upon State and other Federal agencies which frown on this practice to cite those agencies' objections.

10. (c) Please provide to us a copy of all letters, memoranda, notes, and other documents concerning the ITT Palm Coast Development permit applications SAJSP (7200605).

Copies of letters, maps, etc., on the ITT Palm Coast Development are included in packet marked "Incl. 4."

10. (d) What was the State certification received for the ITT Development at Palm Coast?

(1) The public notice stated that "The Florida Department of Pollution Control has certified that there is reasonable assurance that the project will be executed in such a manner which will not violate applicable water quality standards and will monitor the operation of the canal system for compliance." (Underlining supplied.) The 5 June 1972 certification issued for the southern portion (Club House Waterway) of the system states that, "Operation of the above canal system will be

monitored by this (Pollution Control) Department under Chapter 17-4 of the Florida Administrative Code to ensure that the water quality criteria specified in Chapter 17-3 of the Florida Administrative Code is being complied with throughout the entire canal system." (Underlining supplied). In short, the Florida Department of Pollution Control took the position, in a 3 November 1971 meeting attended by the developers and Corps representatives, that an engineering study covering the entire development would be required before the State could certify the project. State representatives considered the canal system as proposed would be a "pollution source," subject to treatment, and a permit for operating a pollution source would be required. The several certifications issued each cover the construction of various parts of the system, while the operation permit monitoring points are spaced throughout the system to cover the entire canal system.

(2) The present application under review (72-0605) covers the entire canal system shown on that public notice dated 19 September 1972 and is in effect a full disclosure of the extent of the indicated upland canal systems and a request for extension of time to complete work authorized by previously issued permits (see below).

(3) The applicant now possesses eight valid permits for construction in the area.

(a) Permit 69-897 authorized connection of a canal (Club House Waterway) to the Intracoastal Waterway about one mile north of St. Joe Canal. Expires 31 December 1973.

(b) Permit 70-706 authorized connection of a canal to the Intracoastal Waterway about two miles north of St. Joe Canal. Expires 31 December 1973.

(c) Permit 70-707 authorized connection of a canal to the Intracoastal Waterway about three miles north of St. Joe Canal. Expires 31 December 1973.

(d) Permit 70-708 authorized connection of a canal to the Intracoastal Waterway about 800 feet south of St. Joe Canal. Expires 31 December 1973.

(e) Permit 70-411 authorized construction of a dock and excavation of an area about 100 feet square on the east side of the Intracoastal Waterway about one mile north of St. Joe Canal. Expires 31 December 1973.

(f) Permit 70-501 authorized construction of a marginal wharf on the east side of the Old Florida East Coast Canal about 9,500 feet north of the south intersection of Fox Cut of the Intracoastal Waterway and the Old Florida East Coast Canal. Expires 31 December 1973.

(g) Permit 71-1159 authorized installation of a submarine water pipeline across the Intracoastal Waterway about 0.9 miles north of St. Joe Canal. Expires 31 December 1975.

(h) Permit 72-701 authorized construction of a boat ramp and

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removal of a plug from an existing boat basin on Club House Waterway. Expires 31 December 1976.

11(a) Corps has declined to prosecute persons responsible for Illegal filling of lake Villa in Broward County, Florida.

1. By letter of 14 September 1959, Gee & Jenson on behalf of Messrs. A. L. and J. L. Mailman applied for a Department of the Army permit for the construction of a bulkhead and for dredging along the Intracoastal Waterway, Broward County, Florida. On 28 September 1959 a public notice was issued for the proposed work. Since no objections were received concerning the proposed work, a Department of the Army permit was issued to Messrs. A. L. and J. L. Mailman on 12 October 1959. This permit authorized the placement of dredged material on Messrs. A. L. and J. L. Mailman's property, shoreward of the Intracoastal Waterway west right-of-way line. Although we do not have information as to whether or not Messrs. A. L. and J. L. Mailman owned Lake Villa in 1959, the issuance of this permit indirectly authorized the filling of Lake Villa. However, after having reviewed certain exhibits attached to the Florida Audubon Society's letter of 6 November 1972, it is evident that the filling of Lake Villa did not commence until January 1969.

2. By letter of 14 March 1969, Mr. Jarrett C. White on behalf of Messrs. A. L. and J. L. Mailman applied for a Department of the Army permit to construct bulkheads, and to dredge and fill in the Intracoastal Waterway with the dredged material to be deposited on upland areas. Along with this application, we were furnished a 24" x 36" information drawing, showing the area that had previously been filled along the Intracoastal Waterway west right-of-way line. It should be noted that this drawing clearly indicated Messrs. A. L. and J. L. Mailman's intent to fill Lake Villa. On 4 April 1969 a public notice was issued for this proposed work. Since no objections were received, the permit was issued on 20 June 1969.

3. By letter of 6 May 1969, Mr. S. Lee Crouch on behalf of Messrs. A. L. and J. L. Mailman applied for a Department of the Army permit to dredge the Intracoastal Waterway to -35 feet mean sea level and to deposit dredged material on upland property. A public notice was issued for this proposed work on 16 May 1969. Since no objections were received, the permit was issued on 8 July 1969.

Our records clearly indicate that all of the above mentioned public notices were given wide circulation to all known interested parties to include local, State and other Federal agencies, and no objections were received. Consequently, all permits were issued pursuant to 33 U.S.C. 403.

If the filling of Lake Villa was occurring today without the issuance of valid permits, this office would recommend legal action. However, since the filling occurred four years ago at a time when the full extent of the Corps'regulatory jurisdiction was not recognized, we did not recommend the initiation of prosecution against the developers of the Lake Villa area for violation of 33 U.S.C. 403.

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11(b) Copies of letters, etc., on the Lake Villa matter are included in packet marked "Inclosure 5". (In Subcommittee files)

12(a) The number of Corps personnel assigned to the Florida area for regulatory work is 20.

(b) Amount of funds available to the Corps for regulatory work:

FY 70	$161,000
FY 71	263,000
FY 72	553,000
FY 73	596,000
FY 74 (Requested)	428,000

(c) Does the Corps have adequate personnel and funds to perform this work? Because of the expanding public interest and jurisdictional limits, the mushrooming of the regulatory program as a result of the recent environmental legislation, and the increasingly complicated and time-consuming coordination requirements, it is expected that additional personnel will be needed to adequately manage the regulatory functions. Since costs are primarily hired labor, there would be a corresponding need for additional funds.

13(a) Violations of Sections 10 and 13 referred for civil or criminal action since March 1972: The following self-explanatory table lists all cases of alleged violations in Florida of Section 10 of the Rivers and Harbors Act of 1899 which have been forwarded through the Office of the General Counsel for referral to the Department of Justice, since March 1972. Section 13 cases have not been included since they were all sent directly from the Jacksonville District to the appropriate United States Attorney. Section 10 cases referred directly to the United States Attorney also have not be included but may be found listed in the table attached to the end of this report.

Name of Alleged Violator	Date Corps District Referred Case to Corps Gen. Counsel for Referral to Justice Dept.	Date Case Received by U. S. Attorney
George Hunt, Inc., et al.	27 March 1972	16 May 1972
C. J. Massee	3 April 1972	9 May 1972
Charley Toppino and Sons, Inc.	19 May 1972	12 September 1972
Bloch Brothers, Inc.	27 June 1972	31 July 1972

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Name of Alleged Violator	Date Corps District Referred Case to Corps Gen. Counsel for Referral to Justice Dept.	Date Case Received by U. S. Attorney
Frank Keevan & Sons Construction Co.	18 July 1972	16 April 1973
Robert L. Dreher, et al.	28 July 1972	7 November 1972
Central Development Company of Crystal River	2 August 1972	20 September 1972
J. R. Matthews	22 August 1972	28 September 1972
Wekiva River Acres, Inc.	31 August 1972	2 October 1972
Rudolph Krause & Sons, Inc.	6 September 1972	5 October 1972
Astor West, Inc., et al.	15 September 1972	19 October 1972
Dr. Edward J. Lurie	20 September 1972	15 October 1972
Ralph D. Bartchlett	28 November 1972	12 January 1973
George Eager	29 November 1972	11 January 1973
Royal American Realty, Inc.	31 January 1973	26 March 1973
Cross Key Waterway Estates, Inc.	8 February 1973	(not received)
South Central Oil & Development Corps., et al.	8 February 1973	(not received)
Stilt Houses in Key West National Wildlife Refuge (22 prospective defendants)	13 February 1973	22 March 1973
Sexton Cove Estates, Inc.	1 March 1973	(not received)
William B. Hannum, Jr. v. United States	2 March 1973	22 March 1973
M. J. J. Construction, Inc.	22 March 1973	12 April 1973
Arthur Lujan, Henry Taylor, et al.	2 April 1973	27 April 1973

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Name of Alleged Violator	Date Corps District Referred Case to Corps Gen. Counsel for Referral to Justice Dept.	Date Case Received by U. S. Attorney
Cable Enterprises, Inc.	19 April 1973	(not received)
Joder Cameron	24 April 1973	(not received)
Darryl Sheley	26 April 1973	(not received)
Emerson Land Development, Inc.	14 December 1972	23 March 1973

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14(a) Jurisdiction Beyond the Mean High Water Line.

As more fully explained in 14(c) infra, the jurisdiction of the Corps of Engineers, by case law, extends only to the mean high water line on the Atlantic coast. Accordingly, the Corps has not sought to assert jurisdiction shoreward of the mean high water line in contravention of the well settled case law. However, in some instances work performed shoreward of the mean high water line has an effect on the nearby navigable waters, and in such circumstances the Corps does exercise its authority on the basis that although the work itself may not be subject to Federal jurisdiction, the result is that an area within Federal jurisdiction (i.e., within the zone of Federal interest) is being affected. Usually the exercise of this authority is expressed through the issuance of a cease and desist order and does not result in court action, since the work is either halted or altered so that it no longer affects the area below the mean high water line. In the case of canals being constructed on the upland, which have not yet been connected in any way with navigable waters, but which apparently will be so connected if the then current work proceeds, the developer is sent a "warning letter" advising that a Department of the Army permit is required for such connection and that costly investments in upland work will not be considered as a factor in determining whether the permit will be issued. The developer is further warned that he will be held liable for the natural and probable consequences of his act and that, therefore, if the "plug" severing the upland canal from navigable waters is removed by wave or tidal action or other forces of nature, a violation of the River and Harbor Act will be considered to have been committed and appropriate legal action may be pursued.

Additionally, the Corps, in appropriate cases, requires applicants for Department of the Army permits to indicate in the application the nature and extent of development on the upland adjacent to the navigable waters affected by the project which is the subject of such application. The upland development is then considered as a factor in determining whether issuance of the permit will be in the public interest. Thus, it may be said that by this procedure the Corps of Engineers is exercising jurisdiction above the mean high water line, but only in a very restricted sense, because the Corps would not be questioning the developer regarding the upland work were it not for the fact that the project, considered in its entirety, involved some work below the mean high water line. In all cases, the mean high water line is the "touchstone" of the exercise of regulatory authority by the Corps of Engineers in accordance with long-established legal precedents.

14(b) Tidal Marsh Above Mean High Water.

Due to the relatively low diurnal high water inequality of the tides of Florida's tidal waters, it is unlikely that there are significant amounts of tidal marsh which occur shoreward of the mean high tide line, although it is recognized that this situation does exist to a limited degree. Furthermore, even these areas wherein a portion of a tidal marsh may be above the

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line of mean high water, it is difficult to conceive of a project shoreward of the line, of such magnitude as to damage or destroy a significant portion of such area, which would not have some adverse impact on the area of the marsh seaward of the line. Thus, since the Corps asserts authority over projects which are either below the mean high water line or which affect the waters below such line, it would appear that there are no significant amounts of valuable tidal marsh in Florida left unprotected by the River and Harbor Act of 1899.

14(c) Different Jurisdictional Lines.

To the extent that the request here involved implies that the Corps of Engineers has arbitrarily applied different jurisdictional lines on the east and west coasts of the United States in the exercise of its regulatory authority under the River and Harbor Act of 1899, it is inaccurate. Quite to the contrary, not only have the jurisdictional limits been set by court decisions rather than by the Corps, but they are also not arbitrary in that there are very logical reasons for the distinction.

First, it is necessary to consider the term "mean high tide line" (or "mean high water line" which, for purposes of this discussion, is used interchangeably with the former term) in both its technical definition and its legal application. The mean high water line is generally defined as the intersection of the tidal plane of mean high water with the shore (see 1 Shalowitz, Shore and Sea Boundaries 301 /1964/). It does not mean a physical mark made upon the ground by the waters, but it means the line of high water as determined by the course of the tides. Borax Consolidated, Ltd. v. Los Angeles, 296 U. S. 10, 22 (1935). In determining mean high water, the Court in the Borax case specified that all the high waters, averaged over a period of 18.6 years or as near thereto as possible, should be used. By utilizing this prescribed method, the line of mean high water can be determined with a great degree of accuracy. For this reason it is useful in coastal areas, which are subject to virtually constant erosion and accretion, as a line of demarcation between water areas and fast land and consequently, the line of Federal jurisdiction over navigable waters. Its usefulness for this purpose has long been recognized by the Federal courts (see, e.g., Hardin v. Jordan, 140 U.S. 371; Shively v. Bowlby, 152 U. S. 1; U. S. v. Pacheco, 2 Wall. 587; U. S. v. Washington, 294 F. 2d 830, cert. den., 369 U. S. 817; and the Borax case, supra).

The obvious question, then, is why the line of the mean of the higher high waters is utilized on the west coast. Essentially, this results from the fact that there is a high diurnal inequality in the heights of both the low and high tides on the west coast (see Marmer, Tidal Datum Planes, pp. 11 et seq., Special Publication No. 135, 1951 Edition, U. S. Government Printing Office). If the mean of all the high tides were utilized in establishing a line for purposes of determining the extent of Federal jurisdiction, such line would fall seaward of a considerable area which is covered daily by one of the two high tides. This is not the situation on the east coast where

the relatively low diurnal inequality would result in a very negligible change if the mean of the higher high waters were utilized instead of the mean of all the high waters; thus, the east-west coast distinction. The high diurnal inequality apparently has been a phenomenon to be contended with by those attempting to set land-sea boundaries for hundreds of years. For example, in Luttes v. State, 324 S. W. 2d 167 (1958) it was held that interpreted references of Las Siete Partidas (the body of Spanish law written in the 13th century) such as "covered with the water of . . ./the sea/ at high tide, during the whole year, whether in winter or summer," and "their highest annual swells," mean, in the light of modern conditions and the need for exact application, the line of mean higher high tides as determined from a 19-year period. The unique problems presented by high diurnal inequality and the use of the more extreme of the two daily tides as a line of demarcation were given judicial recognition by the Supreme Court in the case of United States v. California, 381 U. S. 139 (1965).

Finally, although the question was not presented directly, the use of the term "historic mean high water line" by the Jacksonville District, in reference to areas shoreward of "mosquito impoundment dikes," should be explained. Quite simply the term means the line of mean high water as it existed prior to construction of the dike and would exist currently had the dike never been constructed. It contemplates determining where the tidal plane of the mean high tide (averaged over 18.6 years) would intersect the shoreline but for the artificial structure which prevents regular tidal inundation of the shore area. The term was adopted primarily to be utilized in advising owners of upland areas shoreward of the dikes and the submerged lands impounded by the dikes that the filling-in of such areas requires a Department of the Army permit even though such areas, to the casual observer, would not appear to be below the mean high water line.

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DAEN-GCZ-C
Honorable Henry S. Reuss

15. Warning letters to Mosquito Control Districts for dredging and filling below the "historic mean high water line."

(a) Background information which caused the Corps to issue these warnings, including examples of such illegal activity. The Deputy Regional Director of the Department of Interior, Atlanta, Georgia, wrote the Jacksonville District on September 11, 1972 regarding Corps jurisdiction in mosquito control impoundment areas. They offered the following suggestions for our consideration:

(1) That mosquito control districts and county officials be informed that the seaward perimeter of mosquito control dikes cannot in every case be interpreted to represent the mean high water line.

(2) That appropriate officials of the counties involved inform the riparian owners that these dikes do not represent the mean high water line, and that any property improvement must be preceded by the establishment of the historic mean high water line.

(3) That criteria with which a reasonable facsimile of the mean high water line can be established be developed.

(4) That the Brevard County-Mosquito Control District be notified that all future operations below the mean high water line, other than dike maintenance, must have the sanction of a Department of the Army permit, or the operation will be considered illegal and a cease and desist order will be issued.

As a result of the Department of the Interior's letter, we sent letters to six mosquito control districts on February 15, 1973 outlining the Corps regulatory jurisdiction to the historic mean high water line in spite of the existence of a mosquito control impoundment dike or of the fact that a bulkhead line may have been established by the Trustees of the Internal Improvement Trust Fund which coincides with the alinement of the outer perimeter dike. The letter was sent to the following mosquito control districts.

Martin County Anti-Mosquito District
Palm Beach County Mosquito Control Department
St. Lucie County Mosquito Control District
Indian River Mosquito Control District

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DAEN-GCZ-C
Honorable Henry S. Reuss

East Volusia Mosquito Control District
Brevard County Mosquito Control District

Subsequent to informing these districts, additional addresses were obtained and all of the remaining agencies known (Mosquito Control Districts, County Environmental Departments and Regional Entomologists) were informed of our asserted jurisdiction by letter of April 2, 1973, copy attached. A related news release which received wide coverage in the press is also attached.

(b) Please state whether permits or other authorizations have been issued for these dikes. No permits for mosquito control impoundment dikes can be located.

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

SAJSD

2 APR 1973

Gentlemen:

This letter is furnished for your information and appropriate action as required, outlining our regulatory jurisdiction and permit requirements in areas where mosquito control projects have been constructed.

The Corps of Engineers exercises regulatory jurisdiction in all waterways to the mean high water line. In areas where a dike has been constructed seaward of the mean high water line for purposes of creating an impoundment for mosquito control (or for any other purpose), the area between the historic mean high water line and the dike is considered to remain navigable waters of the United States for permit purposes. Any work done in that area, such as stripping, dredging, or filling, may require a Department of the Army permit. In some cases the Trustees of the Internal Improvement Trust Fund may have established bulkhead lines which coincide with the alinement of the mosquito control dike. However, a Department of the Army permit may still be required for work done in those areas where the historic mean high water line is landward of the bulkhead line. Therefore, officials of the Mosquito Control District should consult with this office prior to doing any work seaward of the historic mean high water line whether or not a bulkhead line has been established.

It is requested that the policy outlined in this letter be brought to the attention of the proper officials having operational control over the Mosquito Control District. It is further requested that as much as possible, or when inquiries are received, riparian owners be notified that a mosquito control dike does not necessarily represent the limit of permit jurisdiction and that any property improvement in the area behind the dike must be preceded by the establishment of the historic mean high water line, and any work done seaward of said mean high water line may require a Department of the Army permit.

SAJSD 2 APR 1973

For work which is to be done by a Mosquito Control District in order to maintain an existing ditch or dike in an impoundment area to restore them to their original condition, a permit would not be required. However, any proposed enlargement or extension of an existing dike or ditch should be coordinated with this office.

If the maintenance will have a potential adverse effect on the public interest such as the destruction of mangrove or other important marsh vegetation or the closure of a gap being used for navigation, the matter should be coordinated for possible permit requirement. Maintenance work requiring a substantial enlargement of the inside ditches should also be coordinated.

If you have any questions regarding this matter, please do not hesitate to contact us. Telephone inquiries should be directed to the Permits Branch, telephone 904-791-2211.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

Copy furn:
County Engineer,

NEWS RELEASE

U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT
JACKSONVILLE, FLORIDA
PUBLIC AFFAIRS OFFICE
P. O. BOX 4970
PHONE: 791-2236
ASK FOR GENE C. BROWN

RELEASE DATE Immediate (April 2, 1973)

ARMY ENGINEERS ISSUE WARNING ON MOSQUITO CONTROL WORKS

Reports that some marsh area mosquito control impoundments may be returned to private property owners and developed for construction sites today brought warnings from the U. S. Army Corps of Engineers that any dredging and filling below the historic mean high water line will require a federal permit.

Gail G. Gren, Chief of the Corps' Operations Division, sent letters to 46 known mosquito control districts in Peninsular Florida stating, "In areas where a dike has been constructed seaward of the mean high water line for purposes of creating an impoundment for mosquito control, the area between the historic mean high water line and the dike is considered to remain navigable waters of the United States for permit purposes."

"Our concern," Gren said, "is that some mosquito impoundment areas which are reverting back to the private property owners, may be viewed as an ideal waterfront development site with a minimum amount of dredging and filling." He said the letters are not intended to make it difficult for the mosquito control function, but are designed to advise property owners that permits will be required for any filling of land below the

historic mean high water line.

Gren also noted that in some cases the Florida Trustees of the Internal Improvement Fund may have established bulkhead lines which coincide with the alinement of mosquito control dikes. He said that regardless of bulkhead lines, officials of mosquito control districts or leasee landowners should consult with the Corps of Engineers prior to doing any work seaward of the mean high water mark.

The point of our letter, Gren said, is that a mosquito control dike does not necessarily represent the limit of permit jurisdiction and that any property improvement in the area behind the mosquito control dikes will require a Department of the Army permit for any work which is seaward of the mean high water line that existed prior to construction of the dike.

The Corps of Engineers pointed out that a federal permit is not required for work done by a Mosquito Control District to maintain an existing mosquito control ditch or dike, but that any proposed enlargement or extension of an existing dike or ditch should be coordinated in advance with the U. S. Corps of Engineers office.

If the maintenance of existing ditches or dikes will have a potential adverse effect on the public interest such as the destruction of mangroves or other important marsh habitat, the work may require a Corps of Engineers permit, Gren said.

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DAEN-GCZ-C
Honorable Henry S. Reuss

16. Please provide to us a current report of the activities and studies concerning the Cross Florida Barge Canal which the Corps has undertaken since the President announced abandonment of this project, including a description of the actions taken to carry out the President's orders regarding this project.

16. On the basis of recommendations by the Department of the Army and Council on Environmental Quality, an amendment for the FY 1972 budget for the Corps of Engineers, Civil was submitted to the Congress on 19 April 1971. This amendment requested funds, which were subsequently appropriated in P.L. 92-134, to carry out work on four contracts on the Canal required in the interest of public safety. This work has been performed, but final contract costs have not been determined since settlement of claims are still being negotiated. In the spring and fall of 1972 the Jacksonville District staff was involved with an intergovernmental task force assembling detailed environmental information on the Cross-Florida Barge Canal relative to the drawdown of Lake Ocklawaha from 18.0 feet to 13.0 feet m.s.l. Information from the studies was used in court proceedings during the summer of 1972 and early in 1973. Some of the information was also used by the U.S.Forest Service, Department of Agriculture in preparation of an environmental assessment and an impact statement on Lake Ocklawaha - Rodman Reservoir to support its proposal, on behalf of the Administration, that Congress designate the Oklawaha River for study as a potential inclusion in the National Wild and Scenic River System and that the Department of Agriculture acquire the Canal and reservoir right-of-way lying in the Lower Oklawaha River, along with other lands, for management as part of the Ocala National Forest.

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DAEN-GCZ-C
Honorable Henry S. Reuss

17. Other Comments Concerning the Corps' Programs and Enforcement:

a. One of the problems in administering the permit program is the inability to make a decision on an application within a reasonable time frame due to the time required to obtain comments from other agencies. Another problem area is the increasing complexity and coordination requirements of the permit program as it affects the individual proposing to do minor work. The solution requires expansion of working relationships with other agencies, and that will develop with time. It may be possible to develop criteria for much of the review conducted by other agencies. The Bureau of Sport Fisheries and Wildlife, for instance, could determine that certain types of structures such as mooring piles, channel markers and possibly bulkheads on canals existing on former upland areas have little or no effect on Fish and Wildlife values and could be permitted without further coordination with that agency.

b. Criteria could also be developed on an area basis so that review capability could be concentrated into environmentally sensitive areas. The coastal zoning map study developed by the State of Florida could be a useful tool in the local area and undoubtedly similar studies exist for other areas. Possibilities also exist for computer application of criteria checking to the permit program, so that once a decision is made that a particular area is not sensitive to certain activities, biologists, engineers and other scientists could be freed from routine checking. In general, such developments could lead to an expanded but effective "short form" method of processing where letters of permission could be quickly issued by the Corps without sacrificing the review quality.

c. The Corps has observed that permit program developments of other governmental bodies, State, County and municipalities are expanding and those programs have a definite relationship to the Federal program. One Florida County is reportedly considering a permit program that would require completion of an environmental study prior to granting of any permit. Another county has been considering a zoning ordinance that in draft form would restrict practically all activity affecting plants, possibly even lawn mowing, within some 500 feet of a water body. Under the Corps proposed regulations, such state and local regulatory laws and programs will be given great weight in determining whether a permit should issue.

I trust that the above information will be helpful to your Subcommittee.

Sincerely yours,

F. J. CLARKE
Lieutenant General, USA
Chief of Engineers

5 Incl
As stated
(attached to original only)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
MARIANNA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 73-11-Civ-M
	)	
EMERSON LAND DEVELOPMENT, INC. and ADOLPH F. MOELLAR,	)	Dld. 4/4/73
	)	
Defendants.	)	

COMPLAINT

1. This is a civil action to secure mandatory injunctive relief to compel defendants Emerson Land Development, Inc. and Adolph F. Moellar to restore Upper Goose Bayou, Bay County, Florida to its course, condition, and capacity prior to the dredging and filling activities of the defendants and to prohibit defendants Emerson Land Development, Inc. and Adolph F. Moellar from further dredging and filling activities in said bayou without the recommendation of the Chief of Engineers and the authorization of the Secretary of the Army. Authority to bring this suit is vested in the Department of Justice by 33 U.S.C. Section 406.

2. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. Section 1345 and 33 U.S.C. Section 406.

3. Defendant Emerson Land Development, Inc. is a corporation organized under the laws of Florida and is doing business with the Northern District of Florida.

4. Defendant Adolph F. Moellar, the president of Emerson Land Development, Inc., is an individual residing in Lynn Haven, Florida.

5. Upper Goose Bayou is a navigable water of the United States located in Bay County, Florida.

6. Since 1968 the defendants have excavated four canals inland from Upper Goose Bayou and have deposited a large quantity of fill material in Upper Goose Bayou at points adjacent to the North Shore Development which is owned by defendant Emerson Land Development, Inc.

7. Neither defendant has nor ever has had the recommendation of the Chief of Engineers or the authorization of the Secretary of the Army to perform said dredging and filling activities.

8. Section 403 of Title 33, United States Code, provides in pertinent part:

> The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; . . . and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

COUNT I

9. Said filling activities of the defendants created an obstruction not affirmatively authorized by Congress to the navigable capacity of Upper Goose Bayou in violation of 33 U.S.C. Section 403.

COUNT II

10. The deposit of fill material and the excavation of said canals alter and modify the course, location, condition, and capacity of Upper Goose Bayou in violation of 33 U.S.C. Section 403.

WHEREFORE, plaintiff, United States of America, prays that:

1. The defendants be directed, pursuant to plans approved by the United States Army Corps of Engineers, to plug said canals;

2. The defendants be directed, pursuant to plans approved by the United States Army Corps of Engineers, to remove said fill material from Upper Goose Bayou;

3. The defendants be directed to take additional remedial and restorative measures, pursuant to the direction of the United States Army Corps of Engineers;

4. The defendants be permanently enjoined from further dredging and filling activities without the recommendation of the Chief of Engineers and the authorization of the Secretary of the Army;

5. The costs and disbursements of this action be awarded to the plaintiff; and

6. The plaintiff be granted such other relief as the Court may deem just and proper.

Respectfully submitted,

William H. Stafford
United States Attorney
P. O. Box 1396
Pensacola, Florida 32502
ROBERT L. CRONGEYER, JR.
Attorney for the Plaintiff

(Note : Enclosures re : ITT Applications 69 - 897 , 70 - 707 , 70 - 708 , and 70 - 706 and map in Committee files)

" Incl. 4 "

APPLICATION NO. 72-0605

ITT COMMUNITY DEVELOPMENT CORPORATION

SAJKS (72-0605) 20 April 1973

Mr. John A. Barton, Chief Engineer
Palm Coast
ITT Community Development Corporation
1000 State Road 100, P. O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

With reference to your permit application 72-0605 for the Palm Coast Canal System, copies of letters recently received from the State Board of Trustees, the Environmental Protection Agency and the Bureau of Sport Fisheries and Wildlife are inclosed for your comment.

The specific information we need is as follows:

a. Status of hydrographic study mentioned in the Trustees' letter.

b. Details of facilities proposed to maintain water quality mentioned in EPA's letter.

c. An indication of the willingness of the ITT Community Development Corporation to post a bond to insure water quality and the amount thereof; also, as discussed in EPA's letter.

d. Information requested in paragraphs 1 through 5 on page 2 of the BSF&WL letter.

At this time we do not intend to require an environmental impact statement as has been requested by both the Bureau and EPA. After receipt of the above information we will so advise them of this decision (assuming there is no additional data which might be presented to change our present position).

Sincerely yours,

JACK A. HOUALT
Acting Chief, Operations Division

3 Incls
As stated

Goddo/Maetzsner/mh/3423

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 488-8123

April 2, 1973

Mr. Gail G. Gren
Chief, Operations Division
Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

SAJSP 72-0605
File Number 253.123-1191, Flagler County
ITT Community Development Corporation

An application was received for the nine canal connections to an existing canal on June 9, 1972. This application has been processed through the state agencies and action on this request is being held in abeyance pending receipt of a hydrographic study being required by the Department of Natural Resources.

We request that you withhold issuance of your permit until such time as a permit for the connections is approved by the Governor and Cabinet. Processing of the application is complete except for the hydrographic study, which must be obtained by the applicant from the university designated by the Department of Natural Resources. The processing time for the application will be dictated by the length of time required for the hydrographic study.

A copy of the letter from the Department of Natural Resources, calling for the hydrographic study, was forwarded to the applicant on August 15, 1972.

Sincerely,

Robert A. Routa
Land Management Division

ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 Peachtree St., N.E., Atlanta, Georgia 30309

Ref: 4AEP:JWB

April 6, 1973

Colonel Emmett C. Lee, Jr.
District Engineer
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Lee:

The Environmental Protection Agency has completed its evaluation of the plans contained on Public Notice No. 72-0605, which advertised an application by ITT Community Development Corporation for a Department of the Army permit to construct a system of bulkheaded canals connecting with the Intracoastal Waterway, Flagler County, Florida.

As we pointed out in conferences with the applicant, members of your staff, and other interested conservation agencies, we are concerned over water quality degradation which will occur in the upland canal system. Our concern also extends into the area of water supply and the demands which the Palm Coast Development will have on existing sources of groundwater. Although we had originally intended to require a mathematical or hydraulic model to determine tidal flushing rates and water circulation patterns in the canals, discussions at the recent meeting in Jacksonville indicate that model studies will not be necessary. During the course of that meeting, Mr. John Barton, of ITT Community Development Corporation, acknowledged that tidal flushing and water circulation would not be sufficient to maintain water quality standards and that facilities would be made available to assure that standards are not violated. He further stated that the company would be willing to post a performance bond to assure that adequate funds were available to provide these facilities.

In light of the water resource problems which could occur as a result of the completion of the Palm Coast Development, we recommend that an EIS be prepared prior to the issuance of a Section 10 permit. Although we concur with the applicant that a model study is not necessary, we will want to evaluate plans for the system that will be constructed to maintain water quality standards prior to providing you with final

comments on this permit application. We will also want to study the adequacy of the performance bond, which the applicant proposes to purchase, in order to insure that it is sufficient to meet the cost of maintaining water quality standards.

We will defer providing you with further comments on this permit application until we have an opportunity to review the EIS, the contingency facilities, and other pertinent material.

Sincerely yours,

Paul J. Traina
Director, Enforcement Division

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

April 16, 1973

District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

In a meeting in your office on March 21, representatives of ITT Community Development Corporation described, for the benefit of this Bureau and the Environmental Protection Agency, the total plan of development for the Palm Coast project, Flagler County, Florida, a portion of which is under review by this Bureau in conjunction with permit application SAJSP 72-0605. At the meeting, the applicant provided our representatives with several maps of the Palm Coast project. Upon close examination of these maps, we find that we have need for still more information regarding upland drainage plans associated with the proposed development.

One of the maps furnished by the developer (copy enclosed--marked "Map 1") is entitled "Plan Showing Upland Areas Tributary to Tidewater Canals." On this plan, watershed zones A through H and J through M are depicted as the entire watershed tributary to the residential waterfront canal system proposed on the permit application. This total tributary area as shown amounts to between 3,000 and 4,000 acres.

A second map (copy enclosed--marked "Map 2") provided by the developer shows a much larger area that is apparently hydraulically connected with the canal system. We have shaded the major drainage canals and waterways as an aid in visualizing the extent of such works apparently contemplated in conjunction with the proposed upland development. Virtually all of the very extensive system of freshwater waterways and drainageways shown on this second map appear to be connected with the tidewater canals. We have marked in yellow and identified as points "A" and "B" what appear to be the major linkages between the "Upland Areas Tributary to Tidewater Canals" as depicted on map 1 and the several thousand additional acres of upland drainage area shown on map 2.

It would greatly assist us in our efforts to review this permit application if the apparent discrepancy between these two maps can be explained. Therefore, it is requested that the following be provided this office and our Vero Beach field office:

1. A determination as to which, if either, of the two maps accurately reflects the developer's plan of upland drainage works in the Palm Coast community.

2. A determination of whether current Palm Coast development plans provide that Bellaire and Belle Terre waterways, marked in yellow on map 2, will be constructed as depicted. If so, will there be connections at points "A" and "B" with areas to the north and south of the "Upland Areas Tributary to Tidewater Canals"? Also, will Belle Terre and Bellaire Waterways be connected with each other at point "C," as appears from the map?

3. An explanation of the unusual shape of the rear portion of some homesite lots (examples circled in red on map 2). Are all such lots waterfront lots? It is difficult to determine from this map where connections occur among and between interior waterways on which these lots front. We need to know where connections occur and, particularly, whether it is anticipated that owners of these apparent waterfront lots will have navigation access to Belle Terre or Bellaire Waterways or other drainageways that connect with the tidewater canal system.

4. Where is the divide between areas drained by Ashwood Waterway (the wide waterway along the west side on map 2) and areas drained by the Bellaire and Belle Terre system?

5. Will central sewerage be provided for all the house lots shown on map 2? If not, which lots will be sewered? If central sewerage is to be provided, will it be installed before residences are occupied, or will it be necessary for some property owners to temporarily use septic tanks and drainfields? If so, for how long will the use of septic tank-drainfield systems be necessary before central sewerage is made available?

We plan to submit additional comments on this permit application in the near future. The above requested information will be extremely helpful to us in formulating these comments.

Sincerely yours,

Jack E. Hemphill

Deputy Regional Director

20-733 O - 73 - pt. 1A - 31

SAJKS (72-0605) 23 March 1973

Mr. John A. Barton, Chief Engineer
Palm Coast
ITT Community Development Corporation
1000 State Road 100, P. O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

With reference to you letter of 16 March 1973 and the meeting held in this office on 21 March 1973, this is to reaffirm the recommendation made in our letter of 9 March 1973 that all upland canal excavation be stopped until the necessary authorization for connection is obtained.

The Department of the Interior representatives at the 21 March meeting advised that they will likely furnish additional comments on the application as a result of the information provided at the meeting. The Environmental Protection Agency representative estimated that their comments would be submitted within three weeks. As soon as these are received, we will transmit them to you and advise you of the action required to resolve the application.

We appreciate the fine presentation you and your consultants made at the meeting and believe the information provided was quite beneficial to all agencies represented.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

Copy furn: ResEngr, Palatka

Goode/mh/3423

SAJKS (72-0605) 23 March 1973

Mr. Robert A. Routa
Land Management Division
State of Florida Board of Trustees of the
Internal Improvement Trust Fund
Elliot Building
Tallahassee, Florida 32304

Dear Mr. Routa:

Your letter of 19 March 1973 on application 72-0605 by ITT Community Development Corporation in which you indicate additional State permits are required comes somewhat as a surprise to both us and the applicant. Since you had previously approved or permitted all connections to the Intracoastal Waterway (our permits 69-897, 70-706 and 70-707), it was our understanding that no further permits were required from the TIITF for the canal system in question.

Nevertheless, since your processing of additional State permits will have a major impact on the time frame for completion of action on the Federal permit, we request your clarification of what the State permit application will cover and the approximate time required for completion of State action.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

Goode/mh/3423

MEETING WITH ITT ON PERMIT 72-0605 — 21 March 1973

B. N. Goode	Corps of Engineers
T. E. Haeussner	Corps of Engineers
Joe Lancaster	Corps of Engineers
Gene C. Brown	Corps of Engineers
James R. Turner	Louisiana State University (RSH).
Ray White	Reynolds, Smith & Hills
David B. Scott	Internal Improvement Trust Fund
Bill Moyer	Fla. Dept. of Pollution Control (NE)
Verne Ray	Corps of Engineers
R. B. (Bob) Dillard	Fla. Dept. of Pollution Control Reg. Planner
Wayne Wathen	Bureau of Sport Fisheries, Atlanta, Ga.
E. T. Heinen	E.P.A., Orlando
John W. Baumeister	E.P.A., Atlanta
John H. Davis	Ecology Consultant, Gainesville, Fla.
Emmett C. Lee, Colonel	District Engineer, Jacksonville District
Gail G. Gren	Corps of Engineers
William E. Welch	Corps of Engineers, District Counsel
Curt Laffin	Bureau of Sport Fisheries & Wildlife, Vero Beach
Gary L. Nelson	National Marine Fishery Service, Panama City 904-265-5031
John P. Crowder	Bureau of Sport Fisheries & Wildlife, Atlanta
Jack Graham	Palm Coast
Stanley Dea	Palm Coast
John Barton	Palm Coast

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 488-8123

March 19, 1973

Mr. Gail G. Gren
Chief, Operations Division
Corps of Engineers, Jacksonville
District
Post Office Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

SAJSP No. 72-0605, Flagler County

Thank you for your letter of March 9, 1973 notifying us of the meeting concerning the ITT Community Development Corporation's pending application. A representative from our Field Operations Division will attend this meeting.

The Board of Trustees has not yet issued a permit for some of the connections shown on your public notice, and we request that you continue to withhold issuance of your permit until such time as a state permit is issued.

Sincerely,

Robert A. Routa
Land Management Division

RAR/cv

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

March 16, 1973

Mr. Gail G. Gren
Chief, Operations Division
Department of the Army
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Fla. 32201

Re: SAJKS (72-0605)

Dear Mr. Gren:

This is to acknowledge receipt of your letter of March 9, 1973 and to reply to the points you highlight in this letter.

I wish to assure you that we are, and always have been, cognizant of the very points you made regarding the excavating of the canals within our upland areas prior to having permission to remove the plugs that connect this work to Club House Waterway. However, at this point in time, we have completed 99% of the canal work in Sections 3, 4, 6 and 16 that hinge upon the removal of the nine Club House Waterway plugs in Section 3. I also wish to record that we were extremely cautious at all times in this matter and did not begin this work until an agreement had been reached with the Department of Pollution Control on a water monitoring program that would insure water quality standards within this system and had received a certification pursuant to Statute 91-224 from this agency. At that point in time, we had no reason to presume that our canal problems had not been fully resolved and that the further aspects of gaining the total permit package were not more or less academic.

I wish to assure you, as we assured the Department of Pollution Control, that we will use all means to guarantee the maintenance of proper water quality within the proposed canal system. Perhaps further assurances and guarantees, if they are required, may be discussed at our upcoming meeting in Jacksonville on March 21. If this explanation is not satisfactory to you and you still recommend we stop this construction on the uplands of the sections mentioned in the above paragraph, of course we will comply.

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

March 16, 1973

Mr. Gail Gren
Page 2

With regard to your last paragraph, I can assure you that the company is completely aware of the provisions of the "Interstate Land Sales Full Disclosure Act" and continue to operate rigidly within the guidelines of this regulation and all other regulations governing our operation.

If you have any questions regarding the contents of this letter, do not hesitate to contact me.

Yours truly,

John A. Barton
Chief Engineer

JAB:jt

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

March 13, 1973

Mr. Gail Gren
Chief, Operations Division
Department of the Army
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Fla. 32201

Re: SAJKS (72-0605)

Dear Mr. Gren:

We have received your letter of March 9 and wish to inform you that Mr. Barton is out of town and will not be back until the end of this week. He has instructed me to gather information so that he can answer you as soon as he returns.

Yours truly,

Zev Cohen
Assistant Chief Engineer

ZC:jt

SAJKS (72-0605) 9 March 1973

Mr. John Barton, Chief Engineer
Palm Coast
ITT Community Development Corporation
1000 State Road 100
P. O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

As you know, the final action on the permit application for the Palm Coast Development (application number 72-0605) is still pending. An inspection of the site by representatives of this office on 7 March 1973 has revealed that you are continuing to excavate canals on the upland that you eventually intend to connect with the Club House Waterway. Although we have previously advised you on an informal basis that such work is being done at your own risk, we consider it necessary to bring this to your attention in writing.

Costly investments on upland construction will not prejudice our final decision on the pending application. All permit applications are now more closely scrutinized as to whether the proposed work is "in the general public interest." Therefore, we strongly recommend that your upland excavation be stopped so that you will not end up with land-locked canals should proper authorization not be obtained. In addition we believe that continued excavation on the upland will make it more difficult to resolve the pending application since both the Department of the Interior and the Environmental Protection Agency have questioned the propriety of the continued upland excavation.

Your attention is also invited to the "Interstate Land Sales Full Disclosure Act," (15 U.S.C. 1701). This Act, in part, prohibits the direct or indirect use of any means of interstate commerce or of the mails to sell, lease or promote subdivisions not registered with the Department of Housing and Urban Development, 15 U.S.C. 1703(a). Section 1705(3) of the Act requires disclosure of any condition affecting the title in the registration statement, for example, failure to obtain a permit required by law. Section 1717 provides for penalties for violation of this law.

Sincerely yours,

GAIL C. CREH
Chief, Operations Division

Goode/mh/3423

SAJKS (72-0605) 9 March 1973

Mr. Jack E. Hemphill
Deputy Regional Director
Bureau of Sport Fisheries & Wildlife
Department of the Interior
17 Executive Park Drive, N.E.
Atlanta, Georgia 30329

Dear Mr. Hemphill:

Your letter of 28 February 1973 recommended that we issue a cease and desist order to stop all canal construction activities in the Palm Coast Development (ITT Community Development Corporation).

All excavation underway in the development is either permitted or is not yet connected to navigable waters. Our jurisdiction regarding upland canal excavation was explained to you in a letter from the South Atlantic Division Engineer dated 1 February 1973. Nevertheless, we have written the applicant with a strong recommendation that he cease all upland excavation and put him on notice that costly investments on upland construction will not prejudice our final decision on the pending application. In addition, we have notified him regarding the requirements of the Interstate Land Sales Full Disclosure Act as it pertains to the development underway.

This letter will also serve to confirm that the joint meeting on this application has been set for 0900 on 21 March 1973 in this office. We look forward to working with you or your representatives in resolving this matter.

Sincerely yours,

CAIL C. GREN
Chief, Operations Division

Goode/mh/3423

SAJKS (72-0605) 9 March 1973

Mr. Joel Kuperberg, Executive Director
State of Florida Board of Trustees of
the Internal Improvement Trust Fund
Elliot Building
Tallahassee, Florida 32304

Dear Mr. Kuperberg:

This is to advise you of a proposed meeting in this office regarding the ITT Community Development Corporation's pending application for the Palm Coast Development. A copy of our letter to the applicant dated 27 February 1973 is inclosed and will provide you with the necessary details on the meeting.

Our last communication with your office on this application was Mr. DuBose's letter of 28 September 1972 which asked us to delay issuance of the permit until you had obtained comments from the environmental agencies. We would appreciate a report on the status of this coordination.

You, or a representative, would be welcome to attend the proposed meeting. By copy of this letter we are also notifying the Department of Pollution Control about the meeting so that they may also send a representative if desired.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

Goode/mh/3423

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
PEACHTREE-SEVENTH BUILDING
ATLANTA, GEORGIA 30323

C-909240
AIRMAIL - CERTIFIED

February 28, 1973

District Engineer
U.S. Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

Reference is made to public notice SAJSP 72-0605, dated September 19, 1972, application by ITT Community Development Corporation for a permit to construct a bulkheaded multi-dead-end canal system at the Palm Coast Development site, west of and connecting to the Intracoastal Waterway land cut, Matanzas River to Smith Creek, Flagler County, Florida.

We understand the meeting to discuss the applicant's plans which was scheduled for February 28, 1973, has been tentatively rescheduled for March 21, 1973. We also understand that the applicant is continuing his dredging operations without the benefit of a Department of the Army permit.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers immediately issue a cease and desist order stopping all canal construction activities in the proposed development until the permit matter is resolved.

Please advise this office within 7 days of the action taken with regard to our recommendation.

Sincerely yours,

Jack E. Hemphill

Deputy Regional Director

SAJKS 72-0605 28 February 1973

Mr. John A. Barton, Chief Engineer
Palm Coast
ITT Community Development Corporation
1000 State Road 100
P. O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

With reference to your 15 February 1973 letter, this is to advise that the Corps will have no objection to you removing trees that have fallen into the Intracoastal Waterway adjacent to your lands. Although we would prefer that you not remove trees "about to fall", our authority on the upland is limited to the rights vested in the United States by the right-of-way easement. Living trees along the shoreline, even though they may be leaning, add considerably to the natural aesthetics of the waterway which we are committed to preserve wherever possible.

Sincerely yours,

GAIL E. GREN
Chief, Operations Division

Goode/mh/3423

Fryer

Welch

SAJKS (72-0605) 27 February 1973

Mr. John C. White
Director, Enforcement Division
Environmental Protection Agency
Region IV
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Mr. White:

This is in reference to your letter of 12 February 1973 regarding the ITT Palm Coast Development Corporation (permit 72-0605) and will confirm my telephone discussion with Mr. George Harlow on 23 February 1973. We understand that you have no objection to the meeting being held in this office instead of at yours, and to deferral of the meeting until 21 March 1973 to give the applicant time to arrange with his consultants for a presentation of the full plan of development. The meeting has been scheduled for 0900 on 21 March 1973 in the 9th floor conference room of the Federal Building, 400 W. Bay Street. We agree that after meeting with the applicant in the morning, a huddle among the Federal agency representatives would be advantageous in deciding on a course of action. We would hope, however, that this meeting could lead to a positive approach on the matter so that this long standing application can be resolved.

By a copy of this letter to the Department of the Interior, we are requesting that they be represented at the meeting. The recommendations furnished us by their letter of 13 November 1972 will be discussed with the applicant.

We look forward to seeing your representatives on 21 March 1973.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

Goode/mh/3423

SAJKS (72-0605) 27 February 1973

Mr. John A. Barton, Chief Engineer
Palm Coast
ITT Community Development Corporation
1000 State Road 100
P. O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

Attached is a copy of a letter dated 12 February 1973 from the Environmental Protection Agency concerning your permit application for the canal system in the Palm Coast Development (72-0605).

In view of your need for additional time to arrange with your engineering consultants to present the total plan of development to the interested Federal agencies, and in conformance with our telephone conversation on the subject, a meeting has been scheduled in this office at 0900 on 21 March 1973 in the 9th floor conference room. Representatives of EPA and the Department of the Interior will be in attendance. The purpose of the meeting is to see the total development concept for the entire ITT Community Development project with emphasis on the portion of the project that will directly relate to the canal systems under consideration. We would also like to discuss the Department of the Interior's recommendations as furnished by their letter dated 13 November 1972.

We look forward to seeing you on 21 March 1973.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

1 Incl
As stated

Goode/mh/3423

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

February 15, 1973

Mr. Gail Gren
Chief, Operations Division
Department of the Army
Corps of Engineers
P. O. Box 4970
Jacksonville, Fla. 32201

Dear Mr. Gren:

Pursuant to the discussion that we had yesterday during our boat tour of the inland waterway in Flagler County, we hereby request that we be granted a letter-type permit from the Corps of Engineers that will permit us to remove fallen trees and/or trees about to fall into the inland waterway, along the right-of-way of the waterway, adjacent to the lands that we own. Hopefully, this would be a more or less long standing permit that we can use to police the areas in the vicinity of our entranceways and intermediate areas until such time that a method and an agreement between the concerned parties can be reached regarding the stabilization of the inland waterway banks.

I certainly enjoyed meeting you yesterday. I hope you enjoyed the brief tour of our project and that we will be able to get together from time to time.

Yours truly,

John A. Barton
Chief Engineer

JAB:jt

ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 Peachtree St., N.E., Atlanta, Georgia 30309

Ref: 4AEP:JWB

February 12, 1973

Colonel Emmett C. Lee, Jr.
District Engineer
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Lee:

As a result of a meeting held in our office on January 30, 1973, with representatives of various governmental agencies and the ITT Palm Coast Development Corporation, we expressed the need for additional information concerning the total plan of development prior to commenting on the dredge and fill permit proposal. We are especially concerned about the drainage from the large residential development which could be directed to the proposed upland canal system.

During the course of that meeting, Mr. Barton, project engineer for the company, offered to arrange a briefing of the master plan for the entire Palm Coast Development. We, accordingly, request that you advise the applicant that we would like to have such a briefing, preferably on February 28, 1973 at 9:00 a.m. in the EPA conference room. Since the information obtained at this briefing session will have a direct bearing on EPA's position regarding this permit, we believe it would be prudent for all of the governmental agencies involved to meet in the afternoon to develop a final coordinated Federal position.

Please advise this office if the February 28 meeting date is acceptable with the applicant. If so, I would hope you and your staff will plan to attend, since your background in problems relating to Section 10 permits will assist us in developing a sound position with regard to the Palm Coast Development.

Sincerely yours,

John C. White

John C. White
Director, Enforcement Division

20-733 O - 73 - pt. 1A - 32

ITT-PALM COAST DEVELOPMENT MEETING

January 30, 1973

John W. Baumgartner	EPA, Permit Branch	Atlanta
George L. Harlow	EPA, Enforcement Branch	Atlanta
R. W. Ruch	EPA, Enforcement Branch	Atlanta
Charles W. Sever	EPA, Enforcement Branch	Atlanta
Larry Zimmerman	EPA, Enforcement Branch	Atlanta
Howard Zeller	EPA, Chf Permit Br.	
Wayne J. Wathen	Bureau of Sport Fisheries and Wildlife	Atlanta
Joe Scott	" " "	Atlanta
Curt Laffin	" " "	Vero Beach, Fla.
John P. Crowder	" " "	Atlanta
M. Rorabaugh	U.S. Geological Survey	Atlanta
A. N. Turcan, Jr.	U.S. Geological Survey	Atlanta
Stanley J. Dea	Levitt & Sons	Lake Success, N
John A. Baston	ITT Community Development	Flagler City, F
B. A. Barnes	Fla. Dept. of Pollution Control	Tallahassee
George Baragona	Fla. Dept of Natural Resources	Tallahassee
Theodore E. Haenssner	Corps of Engineers, Jacksonville	
B. N. Goode	Corps of Engineers, Jacksonville	
Gary L. Nelson	National Marine Fisheries Svc. Water Resources Division	Panama City

SAJKS Permits (72-0605) 11 January 1973

Mr. John A. Barton
Chief Engineer
ITT COmmunity Development Corporation
P. O. Box 878
Flagler Beach, Fla. 32036

Dear Mr. Barton:

Inclosed for your information and any comments you may wish to make are the letters received in response to the public notice for the canal systems in the Palm Coast Development.

You will note in letter from the Environmental Protection Agency that a meeting has been proposed in Atlanta with Dr. Stanley Lea to discuss his study on the Palm Coast Canal System. We understand this meeting has been set up for 30 January 1973 and representatives of the Department of the Interior have been invited to participate. A representative of the Corps of Engineers will also attend.

Following this meeting we will hopefully be in a position to advise you on future action required to complete processing of the permit application.

Sincerely yours,

B. N. COODE
Chief, Permits & Statistics Branch

Ref: 4AEP:JWB

JAN 10 1973

Dr. Stanley J. Dea, P.E.
Levitt Residential Communities, Inc.
400 Lakeville Road
Lake Success, New York 11040

Dear Dr. Dea:

In accordance with our phone conversation today, this will confirm the change of the meeting date to discuss the ITT Palm Coast Development. We will look forward to seeing you on January 30, 1973, at 1:00 p.m., in the 5th floor Conference Room.

Sincerely yours,

/S

John W. Baumeister
Chief, Dredging and Facility Section
Permit Branch

Ref: 4AEP:JWB

JAN 0 4 1973

Dr. Stanley J. Dea, P.E.
Levitt Residential Communities, Inc.
400 Lakeville Road
Lake Success, New York 11040

Dear Dr. Dea:

This will confirm the arrangements which were made to meet with you relative to potential water quality problems associated with the ITT Palm Coast Development. We will look forward to seeing you in the 5th floor Conference Room at 1:00 p.m. on January ~~24~~ 30, 1973.

Sincerely yours,

for Baumeister 1/4/73

JS

John W. Baumeister
Chief, Dredging and Facilities Section
Permit Branch

ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 Peachtree St., N.E., Atlanta, Georgia 30309

Ref: 4AEP:JWB

December 21, 1972

Colonel Emmett C. Lee, Jr.
District Engineer
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Lee:

This agency has completed its review of the plans contained on Public Notice No. 72-0605, which advertised an application by the ITT Community Development Corporation to dredge an upland canal system which would ultimately be connected to the Intracoastal Waterway near Flagler Beach, Florida.

Subsequent to our review of the public notice, we have been in contact with Dr. Stanley Dea, Director of Environmental Engineering for Levitt Residential Communities, Inc. Dr. Dea has forwarded us a copy of a report which his unit has prepared concerning water quality in the proposed canal system and has expressed a willingness to meet with this agency and the Bureau of Sport Fisheries and Wildlife in Atlanta to discuss the findings of his study.

Since there are many potential problems associated with the proposed canal system, we believe that such a meeting should be held prior to our submitting final comments on the permit application. Therefore, we recommend that you defer any action on the permit until we have met with Dr. Dea and have had sufficient time to prepare our letter commenting on the proposed plan of development.

Very truly yours,

Howard D. Zeller

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Dr. Stanley Dea

ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 Peachtree St., N.E., Atlanta, Georgia 30309

Ref: 4AEP:JWB

November 27, 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This is to confirm our telephone request of November 27 for an extension of time until December 15, 1972, in which to provide you with our comments on Public Notice No. 72-0605, which advertised an application for a Department of the Army permit by the ITT Community Development Corporation.

Sincerely yours,

John W. Baumeister

John W. Baumeister
Chief, Dredging and Facility Section
Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

INDEPENDENT FIRE INSURANCE COMPANY

PHILLIP B. KATES
President

November 21, 1972

Col. Emmett C. Lee, Jr., Director
Jacksonville Division
U. S. Army Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

RE: ITT COMMUNITY DEVELOPMENT CORPORATION -
PALM COAST DEVELOPMENT

Dear Col. Lee:

I read with interest Mr. Paul Mitchell's column in the Sunday edition of Jacksonville's Florida Times-Union and Journal, regarding the decision to be reached with regard to this and other developments.

While I am not an expert on pollution nor an ecologist, I have been a conservationist most all my life as an outdoorsman. Observation over a few years only shows the rapid progress of the encroachment of our civilization into a disturbance of our natural resources.

An objection I do have, personally, to the building of large communities along the Intracoastal Waterway is that the congestion on these waterways is becoming so intense that it is most difficult to travel on them with any degree of scheduling. It seems that most anyone who can buy a piece of land on the Intracoastal Waterway immediately puts up a huge sign, "NO WAKE ZONE - 5 M.P.H.". It seems to me, possibly selfishly, that the purpose of an intracoastal waterway is being restricted so much that travel in the future will be most difficult. While each development may seem minor in the overall distance of this waterway, the passage of but a few years could and will have a serious detrimental effect on the purpose for which the canal was constructed.

I am certainly opposed to any large-scale residential developments along this very precious body of water.

Sincerely yours,

Phillip B. Kates

PBK/dy

United States Department of the Interior

OFFICE OF THE SECRETARY

Southeast Region / 404 Financial Services Bldg. / 148 Cain St., N.E. / Atlanta, Ga. 30303

November 13, 1972

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

Reference is made to public notice SAJSP 72-0605, dated September 19, 1972, application by ITT Community Development Corporation for a permit to construct a bulkheaded multi-dead-end canal system at the Palm Coast Development site, west of and connecting to the Intracoastal Waterway land cut, Matanzas River to Smith Creek, Flagler County, Florida.

Enclosed are the comments of the Bureau of Sport Fisheries and Wildlife which are submitted under the provisions of the Fish and Wildlife Coordination Act.

Sincerely yours,

(Miss) June Whelan
Field Representative to the Secretary
Southeast Region

Enclosure

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
PEACHTREE-SEVENTH BUILDING
ATLANTA, GEORGIA 30323

November 2, 1972

Miss June Whelan
Field Representative, Southeast Region, USDI
404 Financial Services Building
148 Cain Street, NE.
Atlanta, Georgia 30303

Dear Miss Whelan:

The Bureau of Sport Fisheries and Wildlife has reviewed the notice of application received from the Jacksonville District, Corps of Engineers, SAJSP, 72-0605, dated September 9, 1972. The applicant, ITT Community Development Corporation, requests a Department of the Army permit to construct a bulkheaded multi-dead-end canal system at the Palm Coast Development site, west of and connecting to the Intracoastal Waterway land cut, Matanzas River to Smith Creek, Flagler County, Florida. Our comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The project involves 28 miles of canals with 136 "dead ends," requiring dragline excavation of 6,500,000 cubic yards of material. Three 200-feet wide entrance canals will be opened at 1-mile intervals. Two entrances, at miles 696 and 697 of the Intracoastal Waterway, will provide access to 10 miles of dead-end canals. No other connections to existing bodies of water are planned. The northwest extremity of the system will be 3 miles from the nearest entrance canal (mile 698).

Matanzas Inlet, the nearest ocean inlet, is 8 miles to the north. The nearest ocean inlet to the south is Ponce de Leon Inlet, 41 miles away. The average tidal fluctuation in this section of the Intracoastal Waterway is 1.1 feet.

The canal system is now being dug through pine-live oak forest uplands which are being denuded of vegetation prior to canal construction. Work is not being done in navigable water because all canals connecting to the work area are plugged.

Physical damage to marine habitat will not be serious but degradation of water quality may be severe because of poor water circulation.

The development plan for Palm Coast calls for sewage collection and treatment so that canals will not receive these wastes. This will delay but not prevent pollution of the canal system.

Storm runoff from fully occupied residential areas similar to those planned for this development is an important source of water pollution in canal systems. Silt, animal excrement, fertilizers, pesticides, litter, leaves, grass cuttings, and auto pollutants (including oil, gasoline, polychlorinated-phenols from tire wear, and detergents from auto washing) are carried into the canals during the storm runoff. Studies have shown that this runoff often contains concentrations of organic and toxic materials comparable to that of secondary treated domestic sewage.

Nutrient and pollutant accumulations resulting from runoff into this poorly circulating canal system will cause water quality degradation. Algal blooms and die-offs which may result would further degrade water quality and result in fish losses.

Extensive fish kills often occur in dead-end canals when fish from adjacent water areas migrate into these systems and become trapped during periods of oxygen depletion. Since flushing is inadequate, the dead fish typically remain in the canals thereby creating odor and health problems and eventually adding their carcasses to the bottom sludge.

Bureau biologists observed that completed lots at Palm Coast slope down to canal bulkheads. This design will serve to enhance the transport of storm runoff pollutants into the canal system.

Unusually heavy rains could easily fill the proposed canal system and flush years of pollutant accumulation into the Intracoastal Waterway causing the probable septic conditions of the canals to extend into natural brackish water and marine habitats affecting fish and wildlife populations.

It is this Bureau's understanding that an agreement has been made between the applicant and Florida's Department of Air and Water Pollution Control which requires the applicant to aerate canals when dissolved oxygen falls below prescribed levels. It is also our understanding that maintenance of additional water quality standards will be demanded by the Environmental Protection Agency. In the event these water quality standards are not maintained in a given canal, that canal would be permanently plugged or filled. Such stipulations should be fully disclosed to buyers of property adjoining any part of the canal system, in accordance with provisions of the Interstate Land Sales Disclosure Act, public law 90-448.

The magnitude and pollution potential of this project causes this Bureau to recommend that a hydrographic study of the entire proposed canal system be conducted by a qualified team of hydrologists chosen by the applicant and approved by the Environmental Protection Agency. The study would be designed to predict the water circulation patterns within the proposed canal

system. Examples of the type of study required may be obtained from the U.S. Army Corps of Engineers Waterways Experiment Station located at Vicksburg, Mississippi.

Should the study reveal that any segment of the proposed canal system will contribute to water quality degradation and thereby affect fish and wildlife, those segments should not be constructed. It is further recommended that canals already constructed which are found to have the potential of degrading water quality be permanently plugged or filled.

The proposed canal system is only part of the 100,000 acre Palm Coast Development. In order to study the impact that this work may have on the water quality and fish and wildlife resources of the Intracoastal Waterway and Florida's northeast coast, all concerned agencies should be given the opportunity to review the overall plan. Drainage of land adjacent to the canal system may alter water quality, and possibly salinity patterns. Locations of sewage effluent outfalls should be made known to commenting agencies so that the potential impact can be assessed and evaluated. All such factors warrant consideration under the permit system. Total project impact cannot be ascertained unless the applicant supplies plans of the entire Palm Coast project to all concerned agencies.

In view of the magnitude of this permit application, and its probable impacts as outlined above, the Bureau of Sport Fisheries and Wildlife recommends that the permit be denied until the following conditions are satisfied:

1. A hydrographic study of the entire canal system be made by a firm of the applicant's choice which is acceptable to the Environmental Protection Agency.

2. Water quality standards be established by the Environmental Protection Agency for the canals of this system.

3. Any proposed canal which is found to have the potential for degrading water quality not be constructed.

4. Any existing canal not meeting Environmental Protection Agency's water quality standards now, or at any future date, be plugged or filled.

5. Total Palm Coast Development plans be supplied the Bureau of Sport Fisheries and Wildlife. These plans should indicate drainage plans of all Palm Coast property and locations of all sewage and storm water outfalls. These factors may contribute to water quality degradation in the proposed canal system and should be considered prior to permit issuance.

6. An environmental impact statement be prepared for the entire project and submitted for review and comment by all appropriate agencies.

This report has been coordinated with and reviewed by the National Marine Fisheries Service. Mr. Jack W. Gehringer, Regional Director, National Marine Fisheries Service, St. Petersburg, Florida, concurs in our recommendations and has authorized me to sign this letter for him.

Sincerely yours,

Jack E. Hemphill

Regional Director

United States Department of the Interior

OFFICE OF THE SECRETARY

Southeast Region / 404 Financial Services Bldg. / 148 Cain St., N.E. / Atlanta, Ga. 30303

October 27, 1972

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

Confirming telephone conversation, an extension until the date indicated is requested on the following public notices:

SAJSP (72-0981), dated September 28, 1972, application by Monterey Development Corporation. Extend until November 30, 1972.

SAJSP (72-1086), dated October 2, 1972, application by South Central Oil & Development Corporation. Extend until December 3, 1972.

SAJSP (72-0605), dated September 19, 1972, application by ITT Community Development Corporation. Further extend until November 17, 1972.

Your cooperation in this matter is appreciated.

Sincerely yours,

June Whelan

(Miss) June Whelan
Field Representative to the Secretary
Southeast Region

Enclosure

EA		DDE		DE
ENG	CONST	OPR	COMP	RE
CHF	CHF	CHF	AUD	OofC
ASST	S&I CHF	PO	BUD	SFT
DESG	QA	NAV	MGT	PER
PLAN	TECH	PROGR	F&A	SUP
SURV	O/E & C/A	A/C	COST	OAS
PROG	ASST (A)	PMTS-ST	DISB	ADP
CD		ADM	EXAM	PAO
SVC		ENF	PROP	SCTY
VE		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY _____ IN _____ DATE _____

October 26, 1972

Mr. Joel Ruperberg, Director
Trustees of the Internal Improvement
Trust Fund
Elliot Building
Tallahassee, Florida 32304

Re: ITT Community Development Corp.
Intracoastal Waterway, Jacksonville to Miami Land Cut, Matanzas River to Smith Creek, Flagler County

Dear Mr. Ruperberg:

Our field biologists have inspected the above mentioned permit application and offer the following comments.

The applicant has applied for a permit to remove plugs from the mouth of nine existing canals. Eight of these are approximately 1,100 feet long, 100 feet wide and 7 feet deep. The ninth, an inland most canal, is the same depth, approximately 150 feet wide and 4,000 feet long. It will serve as the main connector for a maze of dead end lateral canals.

The canals in question have been excavated, and the spoil placed on what is presumed to be uplands. A few scattered Sabel palms are the only remaining vegetation. No aquatic vegetation was seen in or near the canals. The water appeared tannin stained, and tidal fluctuation at the plugs appeared to be approximately 20 inches. No bird's or other wildlife were seen in the area being developed, and mullet were the only fish observed in the connecting canal.

Houses on 10,000 square foot lots which slope toward the water will completely surround the canals, and road drainage will be channeled into the system along with other upland runoff. The drainage from urbanized areas has been shown to be as devastating to receiving waters as is domestic sewage effluent. Also, it may contain additional pollutants such as pesticides, litter, oil, gasoline, polychlorinated

phenols and detergents which may be acutely toxic to the aquatic environment. The chronic result is usually excessive nutrient enrichment.

Although we can only conjecture about flushing action at this point, we believe it will not be adequate to prevent stagnation of such an extensive system. This being the situation, the available nutrients will probably express themselves through luxuriant, noxious, aquatic plant growths which could result in rapid deterioration of water quality. We have documented these unsatisfactory conditions in other canals, and a description of the environment is one dead end, 1,200 feet long canal is as follows:

> "From the river to the upper end of the canal, there is a 2,000 percent increase in turbidity, a 75 percent reduction in dissolved oxygen, and a 1,000 percent increase in acidity. Much of the canal is so unfavorable for supporting life that only tolerant unicellular organisms could survive there."

A more comprehensive analysis of the problems associated with long, dead end, upland canals is discussed in a 1972 report by Partington and Bereda entitled "Report of Investigation of the Environmental Effects of Private Waterfront Canals." Our own data collected in canal systems indicates that they provide degraded and unsuitable habitat for fish and wildlife. In fact, they become an uncontrollable source of nutrient and sediment pollution and are a definite liability to the receiving waters throughout their existence.

It is our opinion that this canal system will not be any different from the many others we have examined. We feel that the entire canal system at Palm Coast including those already connected will adversely effect fish and wildlife resources in the area. In conclusion, our agency recommends against the project due to the destruction of biological resources which will occur.

Sincerely,

O. E. Frye, Jr.
Director

OEF/RS/ra
cc: District Engineer
Jacksonville Army Corps
of Engineers.

United States Department of the Interior

OFFICE OF THE SECRETARY

Southeast Region / 404 Financial Services Bldg. / 148 Cain St., N.E. / Atlanta, Ga. 30303

October 17, 1972

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

Confirming telephone conversation, an extension until November 3, 1972, is requested on the following public notices:

SAJSP (72-0972), dated September 19, 1972, application by Brevard County Board of Commissioners.

SAJSP (72-0605), dated September 19, 1972, application by ITT Community Development Corporation.

SAJSP (72-0911), dated September 18, 1972, application by City o f Boca Raton.

SAJSP (72-0976), dated September 20, 1972, application by Port of Palm Beach District.

Your cooperation in this matter is appreciated.

Sincerely yours,

June Whelan

(Miss) June Whelan
Field Representative to the Secretary
Southeast Region

bcc: BSF&W, Atlanta, Ga.
Asst. Sec. - Program Policy

20-733 O - 73 - pt. 1A - 33

ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 Peachtree St., N.E., Atlanta, Georgia 30309

Ref: 4AEP:JWB

October 16, 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren

This office will require additional time to provide you with our views on the plans for the ITT Development in Flagler County, which were advertised on Public Notice No. 72-0605. We therefore request that action on this permit be held in abeyance until November 22, 1972 in order for us to complete our studies.

Sincerely yours,

John W. Baumeister

John W. Baumeister
Chief, Dredging and Facilities Section

October 9, 1972

Colonel Emmett C. Lee, Jr.
District Engineer
U. S. Army Corps of Engineers
P. O. Box 4970
Jacksonville, Florida

Re: SAJSP Permits (72-0605), ITT Community Development Corporation, Intracoastal Waterway, Jacksonville to Miami Land Cut, Matanzas River to Smith Creek, Flagler County, Florida

Dear Colonel Lee:

The Florida Audubon Society wishes to go on record as opposing the application from the ITT Community Development Corporation, for a permit to construct a system of bulkheaded canals connecting with the land cut at 3 points. Your agency cannot allow the filth which will occur in the "labyrinthine canal system" to pour into the cut, then Smith Creek and the Matanzas River.

Attached, for the record, is a resolution passed by the Trustees of the IIF, State of Florida, on October 4, 1972. Please note that the Trustees resolved the following: "...that the Trustees do hereby call on all persons to take notice that anyone in the process of selling lots, or who has sold lots, on the basis of a commitment to provide navigation access to these lots and is in the process of dredging upland canals will not thereby establish justification for the later issuance of a permit to connect them to the public waters of this state."

On October 7, 1971, the Corps of Engineers and the Trustees of the IIF issued a joint warning to developers. The news release states:

"The Voice of Conservation" FLORIDA AUDUBON SOCIETY
PH. (305) 647-2615 · P. O. DRAWER 7 · MAITLAND, FLORIDA 32751

Col. Emmett C. Lee, Jr.

Florida Audubon Society
October 9, 1972

"The two agency heads also stated that prior investment in upland development will not be considered as a persuasive claim for receiving a permit for a canal connecting those developments with an existing waterway." The permit application in question is a case in point.

The Trustees of the IIF based their resolution on a report entitled Report of Investigation of the Environmental Effects of Private Waterfront Canals. Enclosed is a copy of that report. The information in this report points out the serious pollution which occurs in canals which are described in the permit application in question. The Florida Audubon Society feels that it would be unfair to the purchasers of homes along the canals to allow these systems to be connected to public waters as presently planned.

On page 56 of Report of Investigation of the Environmental Effects of Private Waterfront Canals, the following is suggested: "The contaminated condition of labyrinthine canal systems presents a health hazard to both animals and humans, threatens the quality of receiving waters, and creates costly problems in maintenance for both individual property owners and public agencies." The report also states on page 36, the following: "The consensus of sources contacted in this investigation was that the heavy pollutional load, inadequate circulation, and generally poor water quality which are characteristic of box-cut labyrinthine canal systems lead almost inevitably to contamination from fecal bacteria ."

Based on the existing overwhelming evidence of the pollution in "labyrinthine canal systems" and the previously stated position of the Corps of Engineers regarding upland canal projects, the Florida Audubon Society urges the Corps to deny the permit in question.

Sincerely,

Hal Scott
Executive Director

HS:mn:lr
Enclosures

ENVIRONMENTAL AND ECONOMIC IMPACT OF RAPID GROWTH ON A RURAL AREA: PALM COAST

*By Helen Privett Bird**

Introduction

When a corporate giant strides into a county of 4,500 people and starts building a city of 750,000 people, what happens? "It all depends on how gullible the local government is,"[1] says Joel Kuperberg, Executive Director of Florida's Trustees of the Internal Improvement Trust fund, a guardian of public land. Sadly, the plans for the Palm Coast Development (see the preceding article) have not been given an even slightly critical examination by the officials of Flagler County, Florida, wherein Palm Coast is to be situated. In answer to my own letter of inquiry on Palm Coast, the Clerk of the Board of County Commissioners said, "Flagler County does not have an engineer and most of your questions should be directed to ITT—Palm Coast, as they are the only people having the answers to most of your questions at the present time."[2]

Two tours of the property as a prospective buyer and many trips to interview people in the county provided first-hand data for this study, which counters the pro-Palm Coast thesis of authors Young and Dea in the preceding article. Only one local resident was found who saw the development as a threat if not properly regulated. Mrs. Mary Gurnee and her family moved to Flagler Beach when Daytona Beach became too crowded. A science teacher in the Flagler County school system, Mrs. Gurnee says:

> The biggest problem is that people here are used to all of this open space and they can't believe it's going to disappear. They need help in this county to plan for something like this. The only hope I can see is for the state or somebody to come down here and help us before it's too late. This sort of thing can be done right. I've been in Columbia, the new city outside Baltimore, and it's beautiful. But that is not what is planned here. I don't think you can do it

[on this site] by planning a whole bunch of houses right next to each other.[3]

Regrettably, she is right. Monumental economic and environmental problems are, with the present plans, inevitable. Some developers, however, have discovered that economic as well as esthetic gains can result from genuine protection of the natural environment. For example, a development on Amelia Island in Nassau County, Florida,[4] has hired an environmental planning advisory council composed of national and local conservation leaders. The council meets to review proposed development plans. This institution serves a dual purpose, in providing input for local environmentalists during the planning process and in keeping them informed on what is being considered, what is being rejected, and why. It is a technique that is likely to be adopted in other communities, because it benefits both the developer and the public. Dozens of valid criticisms, constructive suggestions, and innovative solutions to problems have been provided. Problems are solved before they reach the confrontation stage. In other words, planning, in its ideal and practical sense, is in evidence.

My own estimation of Palm Coast's "environmental program" is shared by a prominent management consultant who is familiar with the area:

> Our concern stems from this development's trend to follow all other large real estate developments . . . namely . . . go in . . . bulldoze down all the trees . . . smooth it off and then, having scalped the land of trees, cover grass, and all else, . . . then put up the houses. General, total effect . . . bleak, useless, harmed land, sprouting cubicles of residence, devoid of all nature's beauty, and contributing to the further destruction of the environment because of drainage problems, erosion, and the complete absence of any esthetic value.[5]

A spokesman for the firm now doing Palm Coast's master plan said that the development now underway was initiated by the company before any planning was done. Permission for me to see the master plan was never granted. Engineers at the site claimed they did not have a copy but insisted that they were adhering to it. Their salesmen, called Sales Consultants, said, "By the end of next year [1972] we will have 225 families actually living in Palm Coast."[6] What will this mean?

A study involving 270 families gives some indication. Albert Veri, of the Division of Applied Ecology at the University of

Miami's School of Urban Studies, was given the problem, "What could one more apartment building do?" He found that replacing 20 single family units with a 270 family apartment complex on the same site will generate a need for:

12 acres of public land
3 acres service industry
4 acres retail stores
11 more classrooms
400 more cars
120,000 more gallons of water per day needed
100,000 more gallons effluent and wastes generated
2 more firemen plus $8100 per year more equipment
12 more teachers plus $75,000 per year to school budget
3 more policemen plus $12,900 per year for facilities
1600 more library books
2 miles improved streets, in addition to
$39,930 for health services per year
$69,650 for other services per year[7]

Professor Veri states that only so many cars can operate efficiently on a road at one time:

> Add 100 cars per hour more to the system already operating at capacity, and 60 mph traffic may drop to 20 mph, an idling car generates 50 times more toxic fumes than one at 60 mph, a 10 minute trip turns into an hour trip, noise increases, tempers flare and accidents increase, and on it goes. Similarly, when existing parks become overcrowded, polluted, or waterfront becomes privately owned and blocked from view, one seeks the pleasures which once existed nearby. Roads beget roads, and now one has to travel two hours to fish or swim in yet "undeveloped" areas.[8]

Unfortunately, Flagler County is the undeveloped area to which I, typical of many, retreat from the urban problems of Jacksonville. When it is developed there will be no such sanctuary within one day's round-trip driving distance from Jacksonville.

All of my attempts to communicate with particular engineers or consultants at or for Palm Coast were diverted. It became almost humorous. I would phone someone at Palm Coast, whereupon he, or his secretary, would hang up as quickly as possible. A few minutes later I would receive a call from their Public Relations people in New York. The Public Relations Director would soothingly

assure me that I was not "getting the run around." He merely wanted to be sure that I derived my information from the person best qualified to provide it. In *his* opinion, this was the Vice President for Operations. Although the New York office said that the Vice President spent three days a week at the development, when I checked with secretaries at Palm Coast itself they indicated that he was there only about two days a month. Consequently, I decided to gather my own information. In retrospect, this decision was undeniably wise, since letters and countless phone calls to the developers failed to produce any of the material promised to me for use in this article.

Flagler County, population 4,454, is located 30 miles north of Daytona Beach and 70 miles south of Jacksonville. It is known mainly for the famed Marineland attraction. There are three major north-south highways and one state road running east-west. Rail, bus, and air transportation is through Daytona Beach or Jacksonville. Government is by county and city commissions. There is no county engineer, no county health department to regulate air and water pollution and solid waste disposal, no county forester, no zoning, and until a few months ago, no subdivision regulation. Fire protection is by the Florida Division of Forestry and two small volunteer departments. There is a good 35 bed hospital but no ambulance service except a temporary arrangement with Daytona —30 miles away. Police and Sheriff departments are modest. Schools are deplorable. Into this atmosphere has come the ITT Community Development Corporation with plans for a city of 750,000 by about 1990.

Specific Development-Related Problems

Taxes

The local citizens believe that the broadened tax base from this development will provide them with funds for schools and other amenities. A banker thinks that Palm Coast will contribute to the economy far in excess of their demands for County services. They are almost certainly wrong.

Figure 1 shows nine Florida Counties that gained population between 1950 and 1970. Population growth for the 20 year period was 440%, but taxes went up a staggering 1253%, or 12½ times. And those counties still have not solved their problems even with such tremendous expenditures. Figure 2 shows nine Florida Coun-

Taxes In Nine Florida Counties Gaining Population: 1950-1970

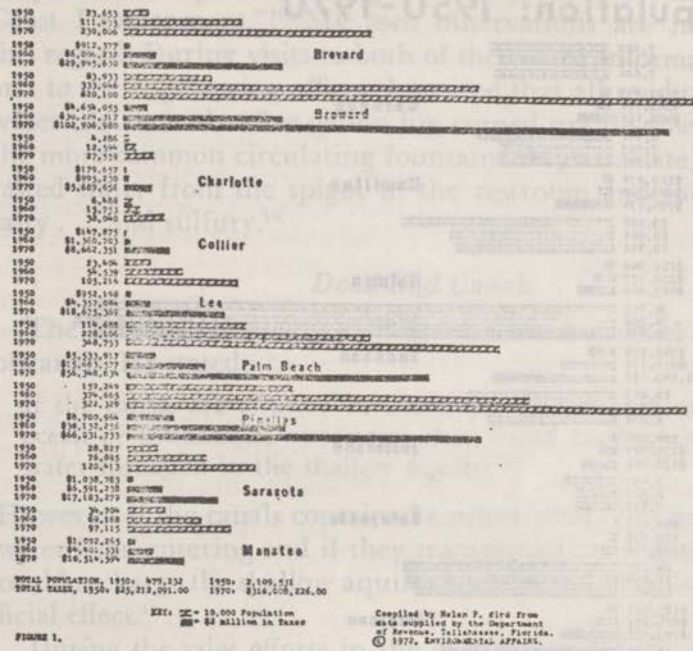

FIGURE 1.

ties that lost population between either 1950 or 1960 and 1970. Using 1950 as 100%, the population in 1970 had dropped to 93%. During that same period taxes went up 4.96 or about five times. This is less than one-half the tax increase experienced by the counties with rapid growth.[9]

Salt Water Intrusion

The District Forester, a man with many years experience, informed us that "salt water intrusion into most areas of the county has been the determining factor that this county has not developed."[10] His information is based on the experience of farmers and others in the county, and is confirmed by the Bureau of Water Resources of the Florida Department of Natural Resources. In a January 1972 issue of *Florida Conservation News,* it is stated that both salt water encroachment and salt water intrusion are problems already and that development is a possible problem in the area.[11]

Hydrologist, G. W. Leve, of the U.S. Department of the Interior Geological Survey, stated, "There is great difficulty in obtaining

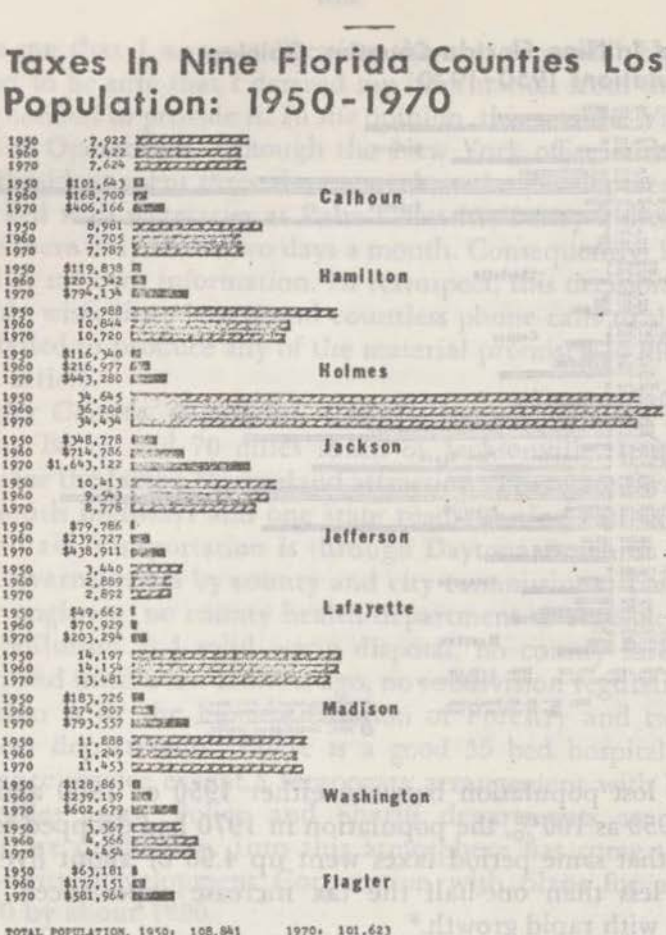

FIGURE 2. 1/10th scale of Figure 1.

fresh water from the Floridian aquifer in this area because of salt-water contamination."[12] He said that the firm hired to do consulting on water "... did not consult with us on a number of occasions to obtain information on wells and quality of water in the area."[13]

erratum

Yet when asked about the salt intrusion problems during a phone conversation, which was tape-recorded with his permission, the Palm Coast Vice President for Operations said, "No, that's an untrue statement. There is no problem with salt water intrusion."[14] The New York consulting firm apparently was not aware of the above mentioned study by the state. Significantly, the Bureau of

Geology in Tallahassee said, ". . . this agency has no record of a proposed development in Flagler County under the name of Palm Coast Development."[15] My own observations are instructive in this regard. During visits to both of the visitor information centers and to the engineering offices, I noticed that all used old-fashioned water coolers with a five gallon jug turned upside-down, instead of the more common circulating fountains. My associate, Mr. Wallis, tasted water from the spigot in the restroom and found it to be salty . . . and sulfury.[16]

Dead End Canals

The federal hydrologist said he was not consulted on the effect of canals. He stated:

> If the canals are allowed to transmit salt water (connected to the ocean or intracoastal waterway) they could produce additional salt water intrusion in the shallow aquifer.[17]

However, if the canals contained control structures to prevent salt water from entering and if they transmitted only fresh water, they could recharge the shallow aquifer with fresh water—hence a beneficial effect.[18]

During the sales efforts in the motor tours of the property, the employees assure prospective buyers that they will have access to the Intracoastal Waterway and to the ocean via their canals. One employee said that about three miles of the proposed 40-mile canal network has been dug. I was told that the inland canals were already connected to the main entrance canal. Because the area is extremely difficult to traverse, even by foot, I was unable to check personally on this information. The Vice President to whom I was referred for such information, however, told me on the phone that Palm Coast had state permits to connect the interior canals. I said they did not.

V.P.: "That is erroneous. We do have permits."

Bird: "You have permission to connect your inland canals with the four big ones?"

V.P.: "Yes." And later, "As far as the permits are concerned we feel that we have enough permits in order to develop these canals we have already filled."

erratum

Bird: "You feel that a person who buys a lot on one of those canals would have access to the Intracoastal Waterway?"

V.P.: "Definitely."[19]

The Palm Coast developers were seriously mistaken on the permit question, since on April 21, 1971 the Florida Department of Air and Water Pollution Control advised Palm Coast Engineer John Barton as follows:

> It is brought to your attention that the three letters of Certification issued to you on October 16, 1971 [sic 1970] covered only the dredging of entranceway canals connecting the upland property to the Intracoastal Waterway at three locations in Flagler County. The issuance of these Certifications did not include the connections to contemplated upland canals.
>
> You are advised that additional Certification in accordance with Public Law 91–224 will be required for any connections that are made to the three canals previously certified.[20]

A letter of January 14, 1972 from the same department (now called, however, the Department of Pollution Control), stated, "The certification was for three entranceway canals into the Intracoastal Waterway. . . ."[21] It did not mention any additional certifications to cover connection of the upland canals. Moreover, the communication stated, "The effects of these extended bodies of water upon water quality are subtle and extremely difficult to detect in the early degradative stages."[22]

In 1971, Dr. John Betz, University of South Florida microbiologist, surveyed 40 canal systems in Florida coastal areas. In 83% he found either a coliform count of at least 2400 per 100 ml of salt water or a gas gangrene count exceeding 1000. In 18 of the 40 systems he found both. He admitted that comparable conditions exist in barnyards, but then wryly noted that people do not pay $10,000 for 100 feet of barnyard frontage. Both values are significant because such organisms are not normally found in salt water, and because when they are found, they are observed to reproduce and die rapidly. In order to have such conditions, one must:

1. Destroy the natural purification mechanisms of the waters that were there previously (i.e., salt marsh or mangroves). One may do this by creating so-called waterfront residential property.
2. Severely inhibit the normal physical purification mechanisms, which usually means inhibiting ordinary water flow or the tidal flushing.
3. Supply such bacteria from sewage or from land runoff.[23]

The problem of canal maintenance at Palm Coast has not been determined. The Vice President said: "We will maintain the canals

for a period of time—a year or two. After that it would be set up in some kind of a district with taxation powers—we haven't really worked out the mechanics of that now."[24]

Before moving to Tallahassee in 1971 to take the Directorship of the TIITF, Joel Kuperberg had years of experience with the canals in South Florida. He states:

> One of the problems is a lack of access to even get a piece of equipment into the completed project to work on the canal. And then where do you put the smelly junk you get out—it's like cleaning out a septic tank—nobody wants it in his yard. So what do you do? There is no law about it.
>
> The only solution I see is a marina system which would offer side benefits such as safety of property left in boats, safety of boats, and would solve a lot of headaches regarding waterway maintenance and access channels.[25]

Tree Preservation

Advertising brochures for Palm Coast once proclaimed, "Palm Coast is the bright promising land of tomorrow because it is virgin, lush and unspoiled." A subsequent revision, however, deleted that passage. With only slightly less exuberance, the new edition says, "Water oaks, live oaks, and palm stretch along both sides of the main access road to the property. And the trees are going to stay . . ."[26]

Are we talking about the same property? The road on which I drove was narrow and poorly paved. It was bordered by sandpine, frequent cypress swamps, and common shrubs. It passed numerous borrow pits left over from the road construction. Perhaps symbolic of a more general misperception of reality by the developers, these pits were marked by signs which read "Fresh Water Pond." The vertical sides of the "ponds" were clearly visible from the road. Frequent large "Deer Crossing" signs, moreover, suggested that deer might continue to inhabit the area. Such an eventuality, however, is highly unlikely.

As one approaches the area of present development, the vegetation thins out dramatically. The great preponderance of underbrush and small trees, including entire forests of oak and palm, have been buldozed, leaving only a few water oaks, which will probably die within five to ten years because of the amount of fill that has been piled upon their roots.

In the model home area I counted 46 dead trees that had been tagged by the developer for removal. Water was standing in pools

around their trunks, an indication that the most elementary precautions for their survival had not been taken. The Vice President declared:

> We have instituted a tree saving program. We try to save as many as possible. We plan to reforest these areas to compensate for any losses, planting trees on the site after development; at least as many trees as were there originally—in some cases there may be more than were there originally.[27]

Of course that would be impossible. I would surmise that less than 1% of the trees have been saved. Not long ago, the area was a forest so dense that one could not see farther than a few feet into it. It was breathtakingly beautiful. Nevertheless, there remains hope for the areas they have not touched; as of January 1972 the developers hired a full-time forester, a welcome step forward.

In my brief conversations with Palm Coast executives, I mentioned several of the most gifted ecological planning firms, such as Wallace, McHarg, Roberts and Todd, as well as Albert R. Veri and Associates. Since the executives had never heard of them, I explained briefly some rudimentary concepts of ecological planning, such as "making the plan fit the site," rather than vice versa. Much development, for example, could have been made to accommodate the site by utilizing only the naturally high areas. Such a plan was developed for south Florida by the Center for Urban Studies.[28] The techniques have been worked out and are available to anyone who is interested enough to seek them out.

Mosquito Control

Vast areas proposed for development carry names like Hulett Swamp, Graham Swamp, and Pringle Swamp. They are, as their names suggest, wet. And they produce prodigious amounts of enormous mosquitos. Mosquito control will probably require huge amounts of pesticides. When asked if they would have any effect on the water supply the development's engineer said he "hadn't given it too much thought."[29] A federal geologist said, "That is an interesting question but it would have to be studied before any statement could be made."[30]

Highway Construction

A major interchange is being planned for I-95 at Palm Coast Parkway. There are plans for a major highway to the beaches via

a high level bridge over the Intracoastal Waterway. Environmental impact statements should be sought on both of these projects. Nothing should be done to disturb the salt marshes or the river. A science instructor, Mrs. Gurnee, explained:

> It's important to leave the river just the way it is. This is where all the fish come from. They spend part of their life up in these marshes. This means money from all of the people who come here for the good fishing they can't get in other places that have already been built up.[31]

Schools

During a sales effort on October 16th, 1971 the question of school accreditation was skillfully sidetracked. When asked whether the school for the area is accredited, a consultant responded evasively, "It's a very good school—they pick you up by bus. . . ."[32] Later that same day I bought *The Flagler Tribune,* which had a front page article on a School Board meeting:

> Heard a letter from Dr. Herman Frick, Florida Committee of Southern Association of Schools and Colleges Accreditation stating he had visited the school plant last week and had two objections to conditions, either of which is sufficient to cause the school to be dropped from the SASCA accredited list.[33]

One concerned salaries, and the other was:

> The physical plant is seriously inadequate in areas as Science laboratories, library, physical education, facilities, vocational education, commerce and others.[34]

In the past, the schools have been situated so as to facilitate the transportation of children from all over the county to a central area. Palm Coast has donated property for a new school but it is not in this central area. As a result, Superintendent Craig was quoted in *The Flagler Tribune* of December 16, 1971 as saying, ". . . five additional buses would be necessary to transport students to the new high school. . . ."[35] The donation was questioned by one board member because of a clause requiring it to revert to the developer if at any future date it should cease to be used for a school. It is not uncommon for such gifts to be made free and clear. For example, many of the school sites in Jacksonville were outright gifts.

After presentations at a School Board meeting by Palm Coast spokesmen, Project Director Dan Cooper and Jacksonville attorney William Adams, the donation was approved with strings:

> Board member Raymon Tucker voted "no" saying that he did not want to appear to be ungrateful for the gift, but, he had some reservations about the reverter clause and wanted more time to study the legal aspects.[36]

Present school conditions were described by Mrs. Gurnee:

> I'm teaching science in an old building that was a temporary several years ago. Our school situation is deplorable. Our high school burned down a year and a half ago and we don't have a high school.[37]

As to the above mentioned School Board meeting, the paper further reported:

> A petition signed by 55 teachers was presented to the Board by Coach Jack Hall asking that the Board proceed immediately to demolish the old building and begin construction of new plant facilities so as to alleviate the poor teaching situation now existing in the schools.[38]

Subdivision Regulations

The most significant step made thus far by the County was initiated by a prominent civic leader. That step was reported in the July 8, 1971 *The Flagler Tribune:*

> The Flagler Board of County Commissioners took action to stop shelling existing subdivision streets and to stop accepting new subdivision plats until the Board could adopt some specific subdivision regulations. This action of the Board at their Tuesday morning meeting was the result of a request made by L. E. Wadsworth.[39]

Later in the same meeting they approved a Palm Coast plat.

A. *Street Construction*

Instead of setting their own standards for streets the County has apparently adopted those set by Palm Coast. It will prove costly to the County if this policy is not changed. Palm Coast streets are 18 to 20 feet wide on 50 foot rights of way. Other developers such as Killearn Estate, Golden Gate Estates, and Port St. Lucie use a 60 foot right of way. Deltona Lakes Subdivision and Marco Island dedicate a 100 foot right of way for major roads with 20 feet of dual lanes and a 60 foot right of way with 20 feet of surface on other roads. They maintain their streets for one year after completion.[40] Palm Coast streets are turned over to the County upon completion. Palm Coast is applying a 6 inch shell and limerock

base with a 1 inch asphaltic concrete topping.[41] Jacksonville requires a 12 inch compacted subgrade, 6 inches of limerock and a 1¼ inch layer of asphalt. A spokesman for the Public Works Department said, "If we're going to maintain a street into perpetuity we want it built properly to begin with."[42]

Since Flagler County has no engineer, there is little if any control over Palm Coast construction. The Palm Coast Vice President's comment was, "They're aware of the roads that we're putting in and they feel these meet adequate standards."[43]

B. *Performance Bonding*

Performance bonds are vitally important, since they assure that work done in public areas will be carried out in a specifically prescribed manner. Duval County, for example, requires any one of the following:

1. A plat bond from a recognized guaranty company.
2. A personal bond guaranteed by an irrevocable letter of credit.
3. A cash deposit from which the city will pay the contractors as the work is performed.
4. Street construction by the developer in accordance with county specifications, and then submission of the plat.[44] The important point is that Duval County can require whatever it feels is necessary to protect the public interest.

The Flagler Tribune for September 9, 1971 carried this account of a Flagler County Commission meeting:

> Palm Coast subdivisions are bonded and the bonds were presented at the meeting.
>
> Chairman Louis Steflik pointed out that the Board attorney, H.T. Cook, had brought to his attention that the bonds were not surety bonds. Mann [the Palm Coast attorney] said this was correct; but, it was the same type of bonds accepted by Florida Land Sales Board and all other states except New York.
>
> The Board then approved the subdivision and bonds.[45]

Apparently, the Commission's own attorney was not present at the meeting, so the Board, creduously, took the word of the developer.

C. *Inequitable Treatment*

As to the same Commission meeting, the local newspaper states in two front page articles:

> The request of Armand Fichetti to have a subdivision plat approved was held up until the Board had completed and approved an ordinance on subdivision regulations.
>
> There was some hesitancy on the part of the Board to approve these two [Palm Coast] plats after turning down the request for a subdivision submitted by Armand Fichetti earlier in the meeting.
>
> Mann [Palm Coast attorney] stated that it would hold up their sales and adversely affect the continued development of the Palm Coast program.[46]

They were approved.

Comparison of Public Offerring Statements

The Florida Uniform Land Sales Practices Law has a provision calling for a public offering statement to ". . . make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands."[47] The Statement is supposed to include:

> Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands. . . . .[48]

Some of this information is given in the Palm Coast Offering Statement (although it is buried in the inner pages thereof), but some of it is missing. Cape Coral and Marco Island have the estimated cost of septic tanks printed in red type on the first page, together with a statement that they may be required in the early stages of development. Palm Coast has this information in regular black type on page four. Their estimated cost of septic tanks, incidentally, is low compared to other subdivisions.[49]

Of the developments featuring canals I did not find any that phrased their statements in such a way that the prospective buyer would understand that he would have to bear the cost of maintaining the canal, or what exactly that would entail.

Many developers offer lots that have been surveyed and staked, for example, Killearn, Marco Island and Deltona. Some even include street lights. At Palm Coast, the property owner would have to pay an estimated $50.00 to $75.00 to have his lot surveyed. There is no mention of street lights.

Salesmen said that sewer and water service will be provided by Atlantis Development Corporation, a wholly-owned subsidiary of the developer. The sewage system will be developed "when economically feasible." There was some question as to who designed the Palm Coast system. An engineer who told me that he had designed it said that there exists a holding tank arrangement to store sewage now being generated for treatment later, when the system is complete. Effluent will be sprayed over the golf courses.[50] The Vice President told me that the system was designed by a Consultant from ITT Levitt. He also said that the existing buildings are presently using septic tanks.[51]

Because of the saline content, there is considerable question as to the wisdom of using effluent for irrigation. In some tertiary treatment methods the salinity is reduced, but in others it is actually increased.[52] Further study should be conducted on this subject. In Duval County the regulation of private utilities has become so burdensome the County is buying them. Flagler County might investigate alternate methods of handling waste disposal, particularly a system that would handle all of the municipalities, including Flagler Beach.

Regulation at the County level can be crucial. Kuperberg states:

> The installment land sales technique works anywhere from eight to twelve years out front. Developers lay out and sell lots years before they actually produce them. By the time they come to the Trustees for a permit to dig a canal they have already sold thousands of lots.
>
> No matter what is in the fine print in the Public Offering Statement they will use the argument that it is not good for the image of Florida to deny these people the property they bought.
>
> I hope we have seen the last of this type of permit granting. I will not recommend it. But of course, I am an employee and what really counts is how the Cabinet votes when it sits as the Trustees of the Internal Improvement Trust Fund.[53]

The most recent occurrence of this scenario was with respect to the scandalous "land exchange," in which the Marco Island Development Corporation "gave" the state several thousand acres of land that the state already controlled, in exchange for permits to dredge and fill other areas that were of undisputedly high biological productivity. The final battle of that war, when the permits go to the federal agencies for approval, is yet to be fought. Clearly, Flagler County must not allow itself to be similarly exploited.

Reducing the Impact of Development

Water quality and quantity are vital at Palm Coast. We asked Mr. Leve how local officials could ascertain the information necessary for intelligent decisions in this regard. He suggested that the municipality, the county, or the state could request hydrological urbanization studies. Such studies are already underway in Orange and Duval Counties.[54] They would determine such matters as the location of suitable areas for sanitary landfill sites and the suitability for sewage spreading. Flagler County might well consider ordering a moratorium on further development at Palm Coast until it can determine more completely what is required to protect the environment and the life and health of the people already living in the area.

Since Flagler County lacks the technical and environmental experts necessary to gather and interpret vital information, it is suggested that the County consider commissioning a Special Task Force of prominent Florida environmental leaders to advise them. This could be done in cooperation with St. Johns County, which itself will be affected by later stages of development.

There is still time to save the incredible beauty of the area, while permitting development. Future generations will find it difficult to forgive a blunder of the magnitude being allowed at Palm Coast. As the ancient prophet, they will revile and call down:

> Woe to those who join house to house, who add field to field, until there is no more room.[55]

Footnotes

* Environmental Consultant with Southeastern Environmental Services, Jacksonville, Florida.

[1] Communication with the author (Oct. 29, 1971).

[2] Letter to author (Oct. 27, 1971).

[3] Interview with author (Oct. 16, 1971).

[4] The Amelia Island Company, a subsidiary of Sea Pines Plantation Company, Hilton Head Island, South Carolina.

[5] Letter to author (Dec. 13, 1971).

[6] Tape-recorded interview with Sales Consultant at Palm Coast (Oct. 16, 1971).

[7] From A. R. Veri, "Population Densities: How Do They Affect Environment"?, The Florida Naturalist (Oct. 1971).

[8] *Id.*

[9] The author wishes to thank W. Curtis Lovelace and George A. Clements for assistance in preparing the tax/population charts.

[10] Letters to author (Oct. 28, 1971 and Jan. 18, 1972).

[11] FLORIDA CONSERVATION NEWS, Department of Natural Resources, Tallahassee, Florida at 8.

[12] Letter to author (Nov. 4, 1971),

[13] *Id.*

[14] Telephone conversation tape-recorded with permission of Eli Pritchert, Vice President for Operations, on or about Nov. 13, 1971.

[15] Letter to author (Nov. 11, 1971).

[16] The author wishes to thank Mr. William Wallis for assisting in research for this article.

[17] Letter, *supra* note 12.

[18] *Id.*

[19] Pritchert, *supra* note 14.

[20] Letter from David H. Scott, Chief, Bureau of Permitting to John A. Barton, ITT Levitt Development Corp., Flagler Beach, Florida.

[21] Letter to the author from James W. Carr, Regional Biologist, Jacksonville, Florida.

[22] *Id.*

[23] Based on material presented at the ECOSWF Conference in Ft. Meyers, Florida in January 1972, which in turn was based on a Report of Investigation of the Environmental Effects of Private Waterfront Canals, prepared by William Barada and William M. Partington, and published by the State of Florida Board of Trustees of the Internal Improvement Trust Fund (Feb. 1, 1972).

[24] Pritchert, *supra* note 14.

[25] Communications, *supra* note 1.

[26] Advertising brochure, "Where Would You Rather Be This Winter?" Palm Coast.

[27] Pritchert, *supra* note 14.

[28] AN ENVIRONMENTAL LAND PLANNING STUDY, SOUTH DADE COUNTY, FLORIDA, Division of Applied Ecology, Center for Urban Studies, University of Miami, Coral Gables, Florida (1971).

[29] Interview with John Barton at Palm Coast on Dec. 15, 1971.

[30] Telephone conversation with G. W. Leve (Dec. 20, 1971).

[31] Interview, *supra* note 3.

[32] Taped interview, *supra* note 6.

[33] The Flagler Tribune, Bunnell, Florida (Oct. 14, 1971).

[34] *Id.*

[35] *Id.* (Dec. 16, 1971).

[36] *Id.* (Nov. 25, 1971).

[37] Interview, *supra* note 3.

[38] The Flagler Tribune (Nov. 25, 1971).

[39] *Id.* (July 8, 1971).

[40] Information obtained from the Public Offering Statements of the within-named developments as provided the author by the Division of Florida Land Sales, Department of Business Regulation, State of Florida.

[41] Pritchert, *supra* note 14.

[42] Conversation with Mr. Davenport, Public Works Department, City of Jacksonville.

[43] Pritchert, *supra* note 14.

[44] Davenport, *supra* note 42.

[45] The Flagler Tribune (Sep. 9, 1971).

[46] *Id.*

[47] 1969 FLORIDA STATUTES, Chapter 478.24(1).

[48] Chapter 478.24 (1)(e).

[49] Information, *supra* note 40.

[50] Barton, *supra* note 29.

[51] Pritchert, *supra* note 14.

[52] Technical data supplied to the author on July 30, 1971 by John Yang, Civil Engineering, State University of New York, Buffalo, New York 14214.

[53] Communication, *supra* note 1.

[54] Leve, *supra* note 30.

[55] HOLY BIBLE, Book of Isaiah, Chapter 5, verse 8.

Reprinted by

Southeastern Environmental Services

P.O. Box 31278 Yukon Branch

Jacksonville, Florida 32230

Phone: 904/387-0379

RESOLUTION OF THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

No. _____

WHEREAS, a preponderance of scientific evidence indicates that canals constructed to create waterfront building sites are ultimately deleterious to the aquatic resources which the Trustees in varying capacities, jointly and severally, are charged with protecting; and

WHEREAS, it appears that such canals may cause serious environmental degradation which reaches beyond the boundaries of the immediate developed property; and

WHEREAS, it appears that where these canals are incisions into the aquifer such development may threaten underground water resources as to both quantity and quality; and

WHEREAS, it appears that waterfront canals may become a liability to the local government as well as to the owner of such waterfront property; and

WHEREAS, it appears that the contaminated condition of labyrinthine canal systems presents a health hazard to both animals and humans; and

WHEREAS, it appears that such canals threaten the quality of receiving waters, and create costly problems in maintenance for individual property owners and public agencies; and

WHEREAS, it appears that the trend toward proliferation of such developments, if unabated, will lead to environmental disaster for Florida citizens; and

WHEREAS, the State of Florida Board of Trustees of the Internal Improvement Trust Fund is gravely concerned by the problem.

NOW, THEREFORE, BE IT RESOLVED by the State of Florida Board of Trustees of the Internal Improvement Trust Fund, in regular meeting assembled, that in the light of present knowledge regarding private residential canal systems it is the policy of the Board to discourage any agency, company, or person, public or private, from constructing a canal system without any prior notification of the Trustees and then applying upon completion for a permit to connect it to navigable waters of the State of Florida.

BE IT FURTHER RESOLVED that the Trustees do hereby call on all persons to take notice that anyone in the process of selling lots, or who has sold lots, on the basis of a commitment to provide navigational access to these lots and is in the process of dredging upland canals will not thereby establish justification for the later issuance of a permit to connect them to the public waters of this state.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to each Board of County Commissioners, to the governing body of each municipality in Florida, to the Department of Pollution Control, to the United States Army Corps of Engineers, to the United States Environmental Protection Agency, and to each accredited representative of the news services in the Capitol to the end that this resolution be given widespread publicity.

Adopted at Tallahassee, Florida this 4th day of October, 1972.

(SEAL)
State of Florida Board of Trustees of the Internal Improvement Trust Fund

Governor

Secretary of State

Attorney General

Comptroller

Treasurer

Commissioner of Education

Commissioner of Agriculture

As and Constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 224-2101

September 28, 1972

		DOE		
ENG	CONST	EPR	COMP	PS
CHF	CHF	CHF	AUD	O&C
ASST	S&I CHF	PO	BUD	SFT
DESG	NOA	NAV	MGT	PER
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SURV	O/E & C/A	APC	COST	OAS
PROG	ASST (A)	PROJECT	DISB	AOP
CD			EXAM	FAO
SVC		EIS	PROP	SCTY
VE		TECH		IAC

FORCOM TAKEN

District Engineer
Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32201

Dear Sir:

SAJSP No. 72-0605, Flagler County

This agency is proceeding to acquire comments from the Game and Fresh Water Fish Commission and the Department of Natural Resources relative to the referenced notice pursuant to the Wildlife Coordination Act.

In accordance with our understanding of the Act and in compliance with your administrative procedures, issuance of the referenced permit will be delayed until comments from the environmental agencies are submitted to your department.

Sincerely,

John DuBose, Director
Land Management Division

JD/tlk

cc: ITT. Community Development Corporation

DEPARTMENT OF THE ARMY
Jacksonville District, Corps of Engineers
400 West Bay Street, P.O. Box 4970
Jacksonville, Florida 32201

Mr. Lancaster/ehm

PUBLIC NOTICE

19 September 1972

SAJSP Permits (72-0605)

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army permit as described below:

APPLICANT: ITT Community Development Corporation
P. O. Box 878
Flagler Beach, Florida 32036

WATERWAY: Intracoastal Waterway, Jacksonville to Miami
Land Cut, Matanzas River to Smith Creek
Flagler County, Florida

WORK: To construct a system of bulkheaded canals connecting with said waterway, westerly shore, at three points about 1 mile, 2 miles and 3 miles north of St. Joe Canal in Flagler County, Florida. Applicant possesses permit for the three connections to the Intracoastal Waterway valid through 31 December 1973 and has now submitted plans (see attached drawings) for the entire canal system as requested by the Corps of Engineers. The Florida Department of Pollution Control has certified that there is reasonable assurance that the project will be executed in such a manner which will not violate applicable water quality standards and will monitor the operation of the canal system for compliance. The southernmost canal system (sheet 1 of 5) is existing.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on the public interest. Factors affecting the public interest include, but are not limited to, navigation, fish and wildlife, water quality, economics, conservation, aesthetics, recreation, water supply, flood damage prevention, ecosystems, and, in general, the needs and welfare of the people.

Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit.

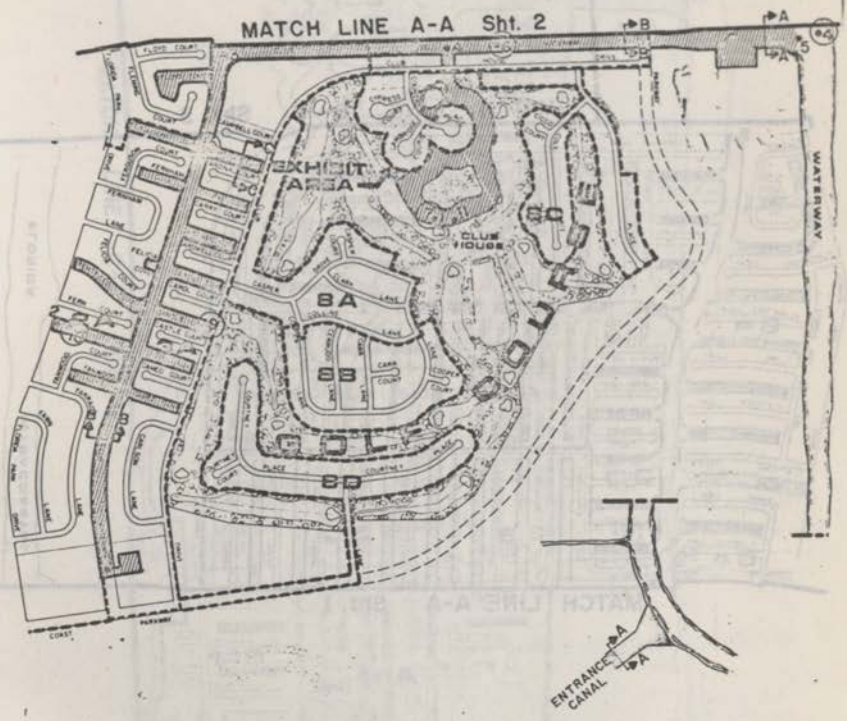
Plans of the proposed work may be seen at the office of the District Engineer at the above address.

Comments regarding the application should be submitted to the District Engineer at the above address on or before 19 October 1972

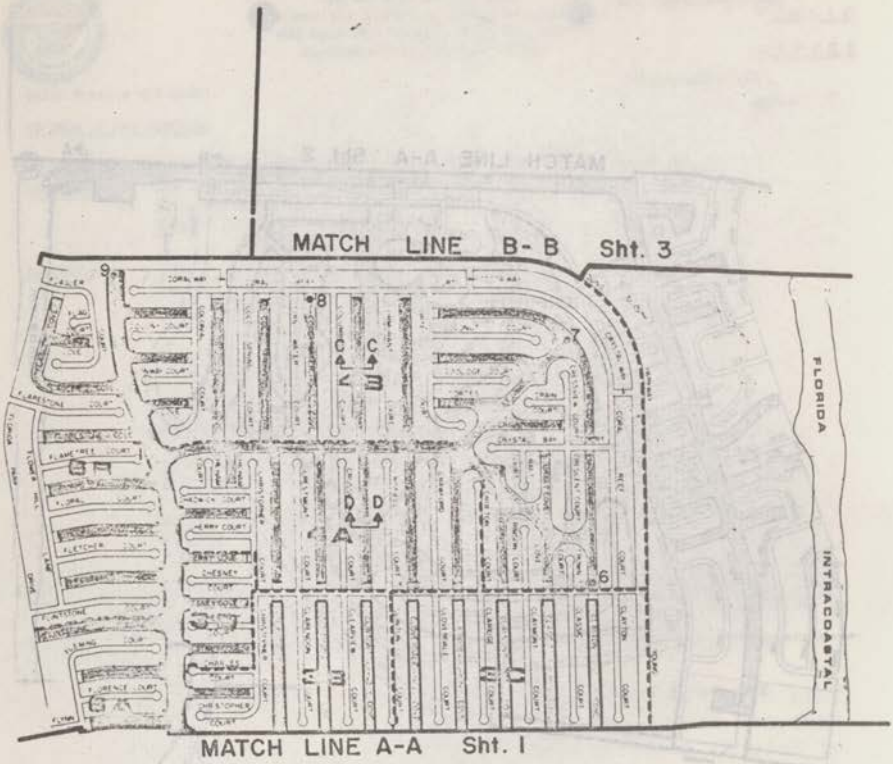
FOR THE DISTRICT ENGINEER:

Gail G. Gren

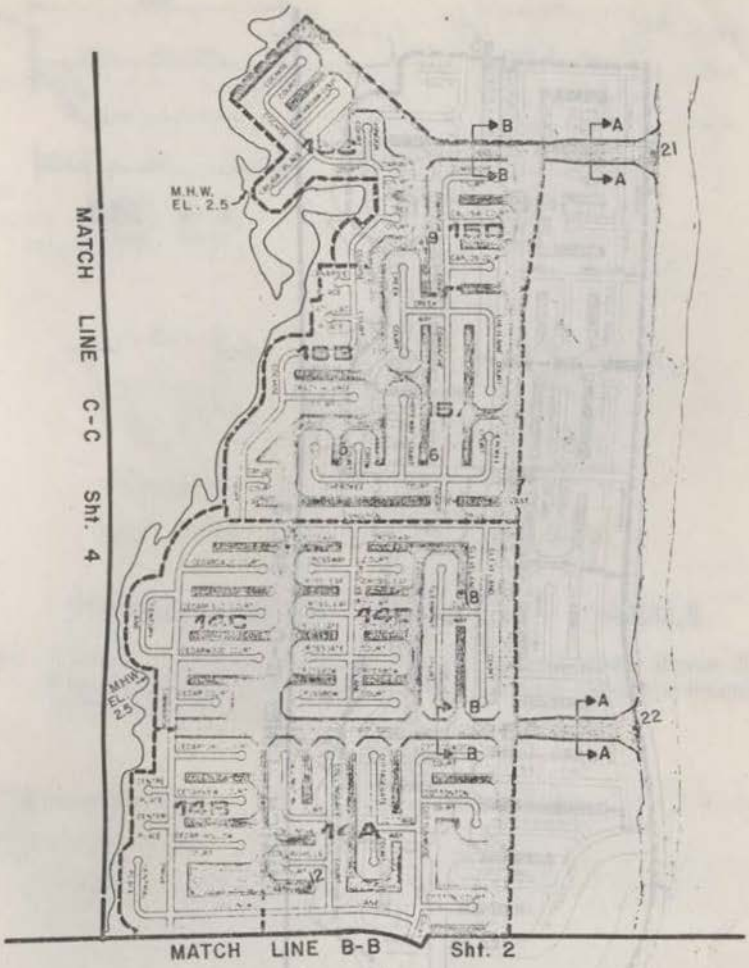
GAIL G. GREN
Chief, Operations Division



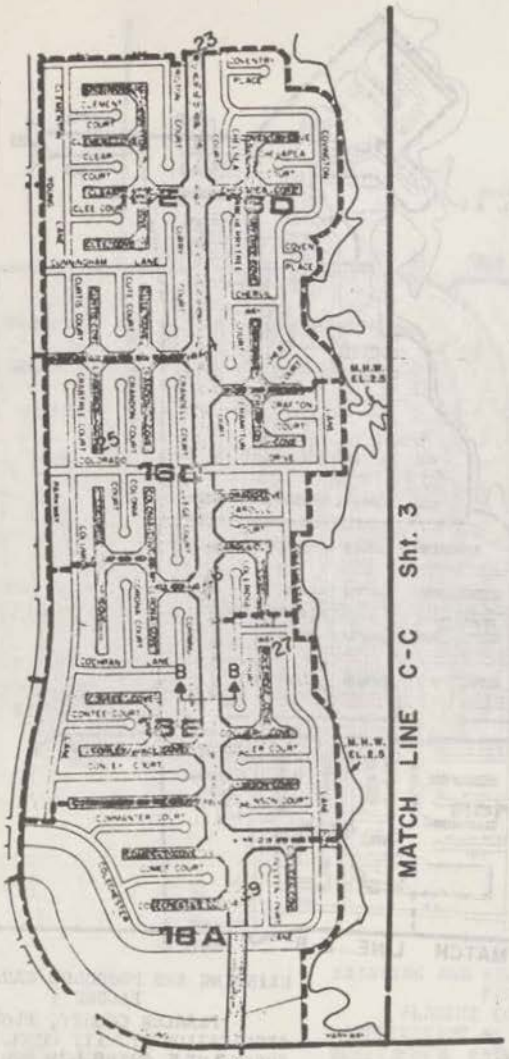
EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 1 OF 5 DATE 8-1-72 DWG. NO. 06-1319



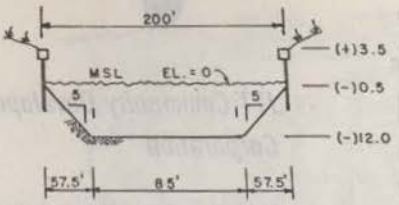
EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 2 OF 5 DATE 8-1-72 DWG. NO. 06-1319



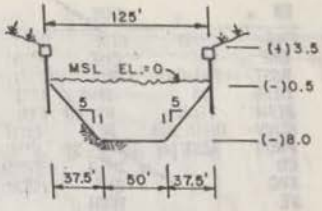
EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 3 OF 5 DATE 8-1-72 DWG. NO. 06-1319



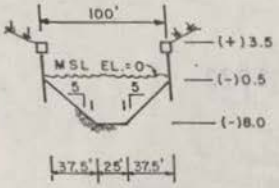
EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 4 OF 5 DATE 8-1-72 DWG. NO. 06-1319



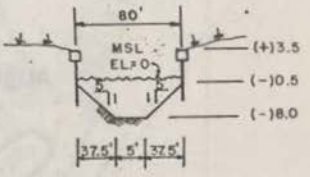
SEC. A-A
200' R.O.W.



SEC. B-B
125' R.O.W.



SEC. C-C
100' R.O.W.



SEC. D-D
80' R.O.W.

TYPICAL CROSS SECTIONS – CANALS

MLW = (-)0.5 ± MHW = (+) 2.5 ±

Note: Culverts To Connect Canal Ends Will Be Installed Where Studies Of Field Conditions Indicate That They Would Provide Beneficial Flushing Of The Canal System.

LEGEND

- -PROPOSED CANALS
- -EXISTING WATERWAYS AND CANALS
- -SEAWALL SHOWN BY HEAVY OUTLINE. SEAWALL IS IN PLACE ON EXISTING CANALS. PROPOSED AS SHOWN ON FUTURE CANALS.
- •2 - WATER QUALITY MONITORING STATIONS
- (•5) - WATER QUALITY SAMPLING STATIONS FOR ENGINEERING STUDY

5 5 8-1-72 06-1319

EA		DDE		DE
ENG	CONST	OPR	COMP	EE
CHF	CHF	CHF	BUD	DoIC
ASST	S&I CHF	PO	BUD	SFT
DESG	QA	NAV	MGT	PER
PLAN	TECH	PROGR	F&A	SUP
SURV	O/E & C/A	PS	COST	OAS
PROG	ASST (A)	ASST	DISB	ADP
CD		PLN	EXAM	PAO
SVC		ENF	PROP	SCTY
WE		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY _____

IN _____ DATE _____

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

August 2, 1972

Department of the Army
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jacksonville, Fla. 32201

Attn: Mr. B. N. Goode
Chief of Permits & Statistics Branch

Re: SAJSC Permit 72-0605

Dear Bernie:

Pursuant to our telephone conversation of last week, I attach one sepia and five paper copies of Drawing #06-1319, Sheets 1 through 5. These drawings are 8 x 10-1/2" copies of Drawing #06-1317.

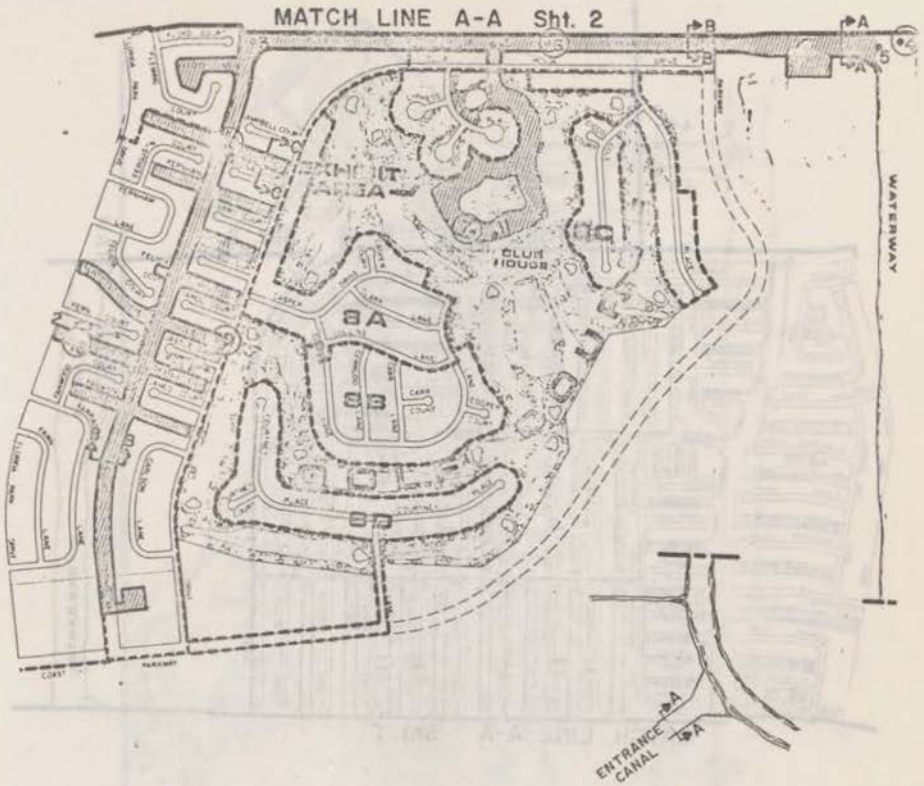
I am sorry it took me so long to get these to you but it was necessary for our Drafting Department to do some redrawing and also some photography was needed to reduce the large drawing to permit a pplication size.

If I can be of any further assistance to you, please contact me.

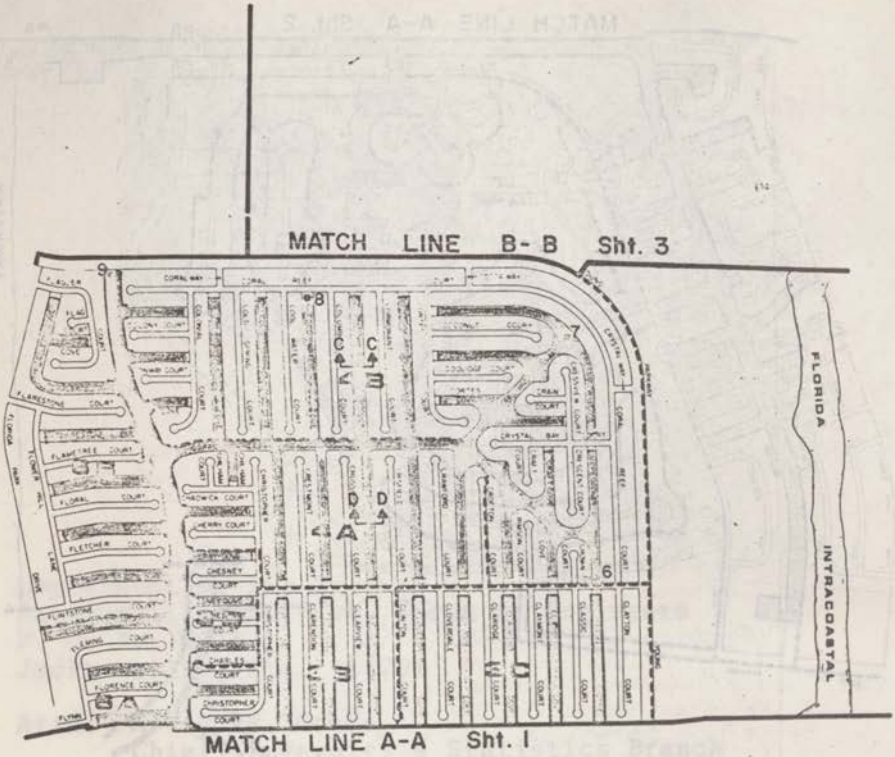
Yours truly,

John A. Barton
Chief Engineer

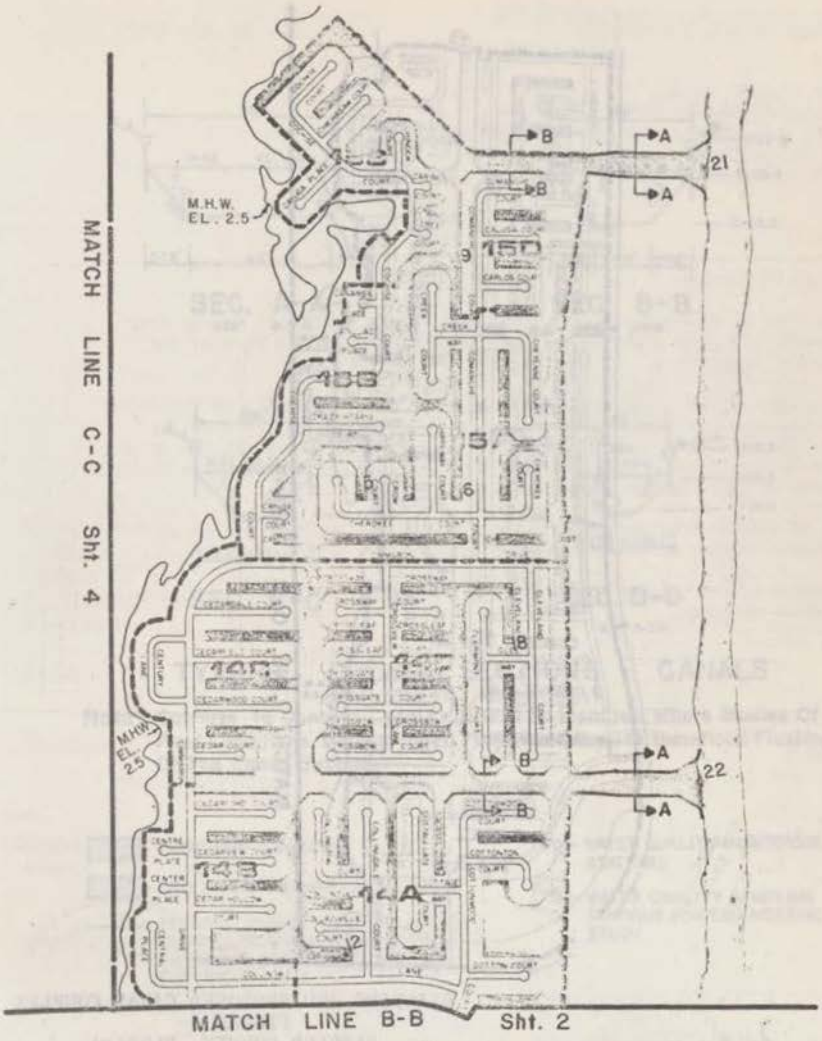
JAB:jt
Enc.



EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 1 OF 5 DATE 8-1-72 DWG. NO. 06-1310

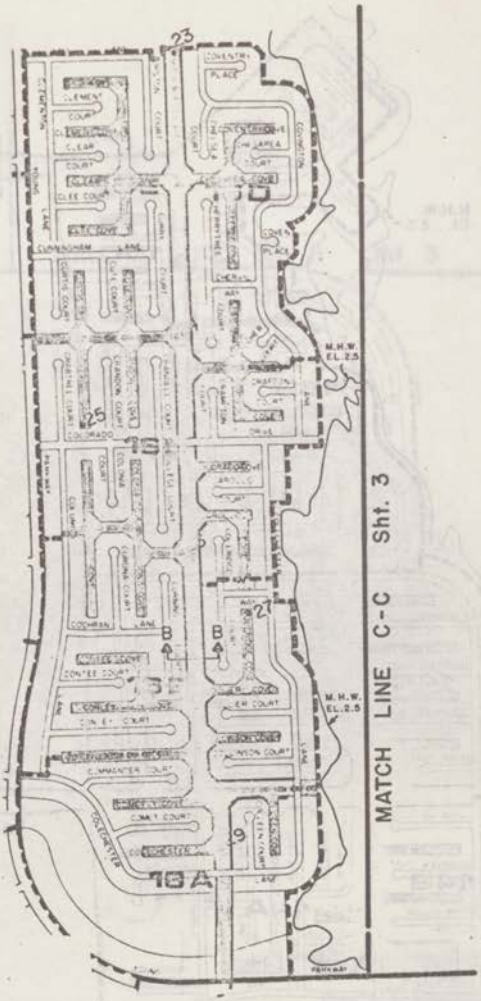


EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 2 OF 5 DATE 8-1-72 DWG. NO. 06-1319

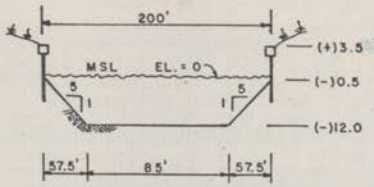


EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 3 OF 5 DATE 8-1-72 DWG. NO. 06-1319

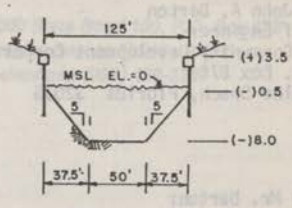
J. Barton



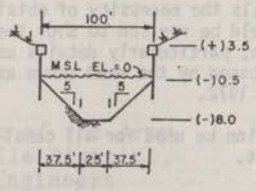
EXISTING AND PROPOSED CANAL COMPLEX
FIGURE 5
FLAGLER COUNTY, FLORIDA
APPLICATION BY: ITT COMM. DEV. CORP.
SHEET 4 OF 5 DATE 8-1-72 DWG. NO. C6-1319



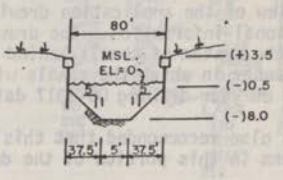
SEC. A-A
200' R.O.W.



SEC. B-B
125' R.O.W.



SEC. C-C
100' R.O.W.



SEC. D-D
80' R.O.W.

TYPICAL CROSS SECTIONS – CANALS

MLW = (-)0.5 ± MHW = (+) 2.5 ±

Note: Culverts To Connect Canal Ends Will Be Installed Where Studies Of Field Conditions Indicate That They Would Provide Beneficial Flushing Of The Canal System.

LEGEND

- PROPOSED CANALS
- EXISTING WATERWAYS AND CANALS
- SEAWALL SHOWN BY HEAVY OUTLINE. SEAWALL IS IN PLACE ON EXISTING CANALS. PROPOSED AS SHOWN ON FUTURE CANALS.
- •2 – WATER QUALITY MONITORING STATIONS
- (•5) – WATER QUALITY SAMPLING STATIONS FOR ENGINEERING STUDY

FIG. 5
FLAGLER COUNTY, FLORIDA
5 5 8-1-72 06-1319

SAJSC Permits (72-0605) 20 July 1972

Mr. John A. Barton
Chief Engineer
ITT Community Development Corporation
P. O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

This is in reference to your application for a Department of the Army permit to remove plugs from canals being excavated as a part of the Palm Coast project.

A review of the application drawings reveals the necessity of obtaining additional information. The drawings should be revised to show the complete system of canals behind the plugs, particularly details as to the manner in which the canals will be crossed by the road shown as Field Drive on your drawing 06-1317 dated 7 Feb 1972.

It is also recommended that this application be used for all canal systems in this portion of the development.

Further action on your application will be taken upon receipt of the revised drawings.

Sincerely yours,

B. N. GOODE
Chief, Permits & Statistics Branch

1 Incl
Pmt dwgs (in 2 sheets)

Cooper/mh/2211

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

June 28, 1972

EA		DDE		DE
ENG	CONST	OPR	COMP	RE
CHF	CHF	CHF	AUD	OofC
ASST	S&I CHF	PO	BUD	SFT
DESG	QA	NAV	MGT	PER
PLAN	TECH	PROGR	F&A	SUP
SURV	O/E & C/A	ADP	COST	OAS
PROG	ASST (A)	PPS-ST	DISB	ADP
CD		CDM	EXAM	PAO
SVC		ENF	PROP	SCTY
ME		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY _____
IN _____ DATE _____

Department of the Army
Jacksonville District,
Corps of Engineers
P. O. Box 4970
Jacksonville, Fla. 32201

Attn: Mr. Joseph T. Lancaster
Acting Chief, Permits & Statistics Branch

Gentlemen:

Re: SAJSC Permits (72-0605)

Per your request, I attach form #4345 and a reproducible copy of the permit drawing.

If you have any further questions, please contact me.

Yours truly,

John A. Barton
Chief Engineer

JAB:jt

FORM APPROVED
OMB NO. 49-R 0408

DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS

APPLICATION FOR PERMIT TO DISCHARGE OR WORK IN NAVIGABLE WATERS AND THEIR TRIBUTARIES

SECTION I. GENERAL INFORMATION

1. State	Application Number (to be assigned by Corps of Engineers)			
	Div.	Dist.	Type	Sequence No.
F L	024	071	L	720605

2. Name of applicant and title of signing official: ITT COMMUNITY DEVELOPMENT CORPORATION
by Elias W. Pritchard, Vice President, Operations

3. Mailing address of applicant:
Post Office Box 878
Flagler Beach, Florida 32036

4. Name, address, telephone number and title of applicant's authorized agent for permit application coordination and correspondence.
John A. Barton, P.E.
Chief Engineer
ITT Community Development Corporation
Post Office Box 878
Flagler Beach, Fla.

NOTE TO APPLICANT: Refer to the pamphlet entitled "Permits for Work and Structures in and for Discharges or Deposits into Navigable Waters" before attempting to complete this form.

Required Information

a. All information contained in this application will, upon request, be made available to the public for inspection and copying. A separate sheet entitled "Confidential Answers" must be used to set out information which is considered by the applicant to constitute trade secrets or commercial or financial information of a confidential nature. The information must clearly indicate the item number to which it applies. Confidential treatment can be considered only for that information for which a specific written request of confidentiality has been made on the attached sheet. However, in no event will identification of the contents and frequency of a discharge be recognized as confidential or privileged information.

b. The applicant shall furnish such supplementary information as is required by the District Engineer in order to evaluate fully an application.

c. If additional space is needed for a complete response to any item on this form, attach a sheet entitled "Additional Information." Indicate on that sheet the item numbers to which answers apply.

d. Drawings required by items 20 and 21 should be attached to this application. Other papers which must be attached to this application include, if applicable, copies of a water quality certification or a written communication which describes water quality impact (see Item 22 and Item 10 of Section II below), the additional information sheet(s) in "c" above, and the confidential information sheet described in "a" above.

Fees

If any discharge or deposit is involved, an application fee of $100 must be submitted with this application. An additional $50 is required for each additional point of discharge or deposit.

Signature

a. If a discharge is involved, an application submitted by a corporation must be signed by the principal executive officer of that corporation or by an official of the rank of corporate vice president or above who reports directly to such principal executive officer and who has been designated by the principal executive officer to make such applications on behalf of the corporation. In the case of a partnership or a sole proprietorship, the application must be signed by a general partner or the proprietor. Other signature requirements are discussed in the pamphlet.

b. If no discharge is involved, an application may be signed by the applicant or his authorized agent.

Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate.

Elias W. Pritchard
Signature of Applicant

6-27-72

18 U.S.C. Section 1001 provides that:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

FOR CORPS OF ENGINEERS USE ONLY

Acronym name of applicant

Are discharge structures: Major? ☐ Minor? ☐ N/A? ☐

Date received, form not complete — — — — — —
Date received, form complete but without certificate — — — — — —
Date received, form complete — — — — — —
Date of Cert./Ltr. — — — — — —
(day mo yr)

Date sent to EPA, form not complete — — — — — —
Date sent to EPA, NOAA, D/I, AEC, FPC in complete form — — — — — —
(day mo yr)

5. Date: JUN 27 72 (mo / day / yr)

(Office use only)

6. Check type of application: a. Original ☐ b. Revision ☒

7. Number of original application: SAJSC 72-0605

8. Name of facility where discharge or construction will occur.
Canal excavation, plug removal, Flagler County, Florida
(part of Palm Coast project)

9. Full mailing address of facility named in item 8 above.
No mailing address. Project located in
Sections 39, 42, 43, Township 11 South, Range 31 East,
Flagler County, Fla.

10. Names and mailing addresses of all adjoining property owners whose property also adjoins the waterway.
All adjacent property under same owner

11. Check to indicate the nature of the proposed activity:
a. Dredging ☒ b. Construction ☒ c. Construction with Discharge ☐ b. Discharge only ☐

12. If activity is temporary in nature, estimate its duration in months.
18 months

If application is for a discharge:

13. List intake sources

Source	Estimated Volume in Million Gallons Per day or Fraction Thereof
Municipal or private water supply system	
Surface water body	
Ground water	
Other	

14. Describe water usage within the plant

Type	Estimated Volume in Million Gallons Per day or Fraction Thereof
Cooling water	
Boiler Feed water	
Process water	
Sanitary system*	
Other	

15. List volume of discharges or losses other than into navigable waters.

Type	Estimated Volume in Million Gallons Per day or Fraction Thereof
Municipal waste treatment system	
Surface containment	
Underground disposal	
Waste Acceptance firms	
Evaporation	
Consumption	

* Indicate number employees served per day _____

ENG FORM 4345
MAY 71

If structures exist, or dredging, filling or other construction will occur, the precise location of the activity must be described

(Office use only)

a. Name the corporate boundaries within which the structures exist or the activity will occur.

16. State: Florida 17. County: Flagler 18. City or Town: --

b. Name of waterway at the location of the activity

19. Club HOuse Waterway - Intracoastal Waterway

20. Maps and sketches which show the location and character of each structure or activity, including any and all outfall devices, dispersive devices, and non-structural points of discharge, must be attached to this application.

21. For construction or work in navigable waters for which a separate permit is sought under 33 U.S.C. 403, the character of each structure must be fully shown on detailed plans to be submitted with this application. Note on the drawings those structures for which separate discharge information (Section II of this form) has been submitted.

22. List all approvals or denials granted by Federal, interstate, State or local agencies for any structures, construction, discharges or deposits described in this application.

Type of document	Id. No.	Date	Issuing Agency
Dredge & Fill Certification	NE4-72-81 DF-18-437	6-5-72	Florida Dept. of Pollution Control
State Dredging Permit (pending)		Applied 6-8-72	State of Florida, Trustees of the Internal Improvement Fund

23. Check if facility existed or was lawfully under construction prior to April 3, 1970. [XX]

24. If dredging or filling will occur:

State the type of materials involved, their volume in cubic yards, and the proposed method of measurement.

Fine sands and shell, approximately 45,000 C.Y.
Measurements of volumes by soundings
Methods of dredging: dragline

25. Describe the proposed method of instrumentation which will be used to measure the volume of any solids which may be deposited and to determine its effect upon the waterway.

Turbidity control "diaper" to be used during dredging to insure control of turbidity within 50 Jackson Units.

26. State rates and periods of deposition described in Item 25.

N/A

SAJSC Permits (72-0605) 20 June 1972

ITT Community Development Corp.
P. O. Box 878
Flagler Beach, Florida 32036

Gentlemen:

Your application for a Department of the Army permit dated 8 June 1972 is being held in abeyance pending additional requirements listed below:

a. Regulations require that ENG Form 4345 be used in lieu of the letter of application for Department of the Army permits after 1 June 1971.

b. Tracing 8 x 10-1/2 inches in size.

You are cautioned not to proceed with any of the proposed work prior to receipt of a Department of the Army permit authorizing said work.

Action on your application will await its return with additional information as requested.

Sincerely yours,

2 Incl
1. ENG Form 4345 w/instrs
2. Drawing

JOSEPH T. LANCASTER
Acting Chief
Permits & Statistics Branch

Mrs. Claydon/ehm/2217

ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

72-0605

EA		DDE		DE
ENG	CONST	OPR	[illegible]	[illegible]
CHF	CHF	CHF	AUD	DOIC
ASST	S&I CHF	PO	BUD	SFT
DESG	QA	NAV	MGT	PER
PLAN	TECH	PROGR	FRA	SUP
SURV	O/E & C/A	ACC	COST	OAS
PROG	ASST (A)	PLNG ST	DISB	ADP
CD		LOG	EXAM	PAD
SVC		ENF	PROP	SCTY
WE		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY _____
IN _____ DATE _____

June 8, 1972

Department of the Army
Jacksonville District, Corps of Engineers
P. O. Box 4970
Jakcsonville, Fla.

Attn: Mr. Bernard Goode
Chief, Permit & Statistic Branch

Re: Palm Coast Development
Nine Entranceways off Club House Waterway

Gentlemen:

We hereby apply for a permit to construct nine dredged entranceways off Club House Waterway, an existing waterway off the Intracoastal Waterway.

The subject entranceways are as shown on Permit Drawing #06-1513, Sheets 1 and 2. I have attached a letter of certification from the Department of Pollution Control approving this proposed construction and I am, at this time, writing to Mr. DuBose of the Trustees of the Internal Improvement Trust Fund to get assurance that they have no objections to this proposed construction.

In keeping with my discussion with Mr. Joe Lancaster last week, I also request the necessary approval to install the seawalls within the upland areas as depicted on our overall canal scheme shown on attached Drawing #06-1317.

We propose to perform this work in conformity with the regulations as set forth in Florida Administrative Code and also in conformity with any and all of the regulations

. ITT Community Development Corporation

1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

June 8, 1972

Mr. Bernard Goode
Page 2

of the U. S. Corps of Engineers.

We are the owners of all land adjacent to this construction facility. This facility lies within the boundaries of Flagler County, Florida, and is not within the corporate limits of any municipality.

If you have any questions regarding this request, please do not hesitate to call me.

Yours truly,

John A. Barton, P.E. & L.S.
Chief Engineer

JAB:jt

Enc. (5 copies 06-1513, Sheets 1 & 2)
(5 copies 06-1317)
Certification from Dept. Of Poll. Control

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

KENT D. PATTON
EXECUTIVE DIRECTOR

June 5, 1972

DAVID H. LEVIN
CHAIRMAN

Flagler County
Dredge and Fill Certification
NE 4-72-81
DF-18-437

rec 26 apr 72

EA		DDE		DE
ENG	CONST	OOR	COMP	RE
CHF	CHF	CHF	AMD	GoIC
ASST	S&I CHF	PO	EHD	SFT
DESQ	QA	N&V	MGT	PER
PLAN	TECH	PROGR	F&A	SUP
SURV	DIE & C/A	AFC	COST	OAS
PROG	ASST (A)	PMTS SY	DISB	AOP
CD		ROW	EXAM	PAO
SVC		ENF	PROP	SCTY
WE		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY
IN DATE

ITT Community Development Corp.
Post Office Box 878
Flagler Beach, Florida 32036

Attention: Mr. John A. Barton, P.E.

Gentlemen:

Pursuant to Public Law 91-224, this will certify that there is reasonable assurance that the following project will be executed in a manner which will not violate applicable water quality standards of the State of Florida:

> Dredge in nine places to connect upland canal system to Club House Waterway, Intracoastal Waterway, Palm Coast, Flagler County, Florida as shown on the attached map. (ITT Community Development Corporation drawings No. 06-1317, Sheet 1 of 1 dated February 7, 1972)

Operation of the above canal system will be monitored by this Department under Chapter 17-4 of the Florida Administrative Code to ensure that the water quality criteria specified in Chapter 17-3 of the Florida Administrative Code is being complied with throughout the canal system. The conditions under which the Operating Permit will be issued are as outlined in attached letter dated February 29, 1972, from W. E. Linne, Department of Pollution Control to Mr. E. W. Pritchard, ITT Community Development Corporation.

The issuance of this certification is based on a review of the details of the project and a public notice of this Agency's intent to certify the same.

The applicant is hereby required to notify this agency of the schedule of the project before beginning any work covered by the certificate.

Sincerely,

W. E. Linne, Acting Chief
Bureau of Permitting

dwg in back
of folder

WEL/bmk

cc: Corps of Engineers, Board of Trustees

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

VINCENT D. PATTON
EXECUTIVE DIRECTOR

DAVID H. LEVY
CHAIRMAN

February 28, 1972

Flagler County IW
Palm Coast Project
(ITT Community Development Corporation)
Canal System

Mr. E. W. Pritchard
Vice President, Operations
1345 Avenue of the Americas
New York, New York 10019

Dear Mr. Pritchard:

This will acknowledge receipt of permit to operate applications and attached copies of Water Quality Engineering Study of Palm Coast Canals relative to the Palm Coast Project canal system presently under construction.

Following a careful review of the material submitted, we find this canal system (as shown in ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 7, 1972) to be acceptable subject to the following:

1. Waters from canals as construction is completed and from the Intracoastal Waterway shall be monitored as indicated below at all stations specified in the ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 7, 1972.

Required Examinations	Frequency
Dissolved Oxygen, pH, Salinity, Temperature, Turbidity	Continuous
BOD, COD, Total Volatile Solids (Suspended and Dissolved), Coliform Organisms (MPN), Alkalinity, Oils and Greases (Surface Samples), Organic Nitrogen, Ammonia Nitrogen, Nitrate Nitrogen, Total Nitrogen, Ortho Phosphates, Total Phosphates, Total Plankton, Pesticides, and Herbicides	Weekly

All samples other than those to be examined for oils and greases shall be collected one foot below the surface, except at Stations No. 1, No. 3, and No. 5 where samples shall be collected at canal bottom as well as one foot below the surface.

Sampling times shall be correlated with tidal conditions. Monthly operation reports containing results of this monitoring program shall be submitted to the DPC Northeast Florida Regional Office, 4441 Emerson Street, Jacksonville 32207 and this Office.

2. In reference to Chapter 17-4 FAC, the issuance of an operation permit must be based upon actual substantiation that Florida water quality criteria specified in Chapter 17-3 FAC is being complied with throughout the canal system. In this particular case monitoring results for an entire year including the critical summer months, are required by this Department for evaluation toward the issuance of an operation permit.

3. Appropriate permits from the State of Florida Internal Improvement Trust Fund and the Corps of Engineers as well as Public Law 91-224 certification shall be obtained prior to the construction of canals.

4. Portable oxygenation-circulation devices shall be installed in finger coves farthest removed from the Intracoastal Waterway and other points, if necessary to insure compliance with State water quality criteria. Such devices shall be available for utilization whenever needed.

5. Connection of canals to eliminate dead ends is recommended where practical for increasing circulation and improving canal water quality.

6. In addition to the results of monitoring as called for in item (1), the following shall be submitted to this Department prior to our issuance of an operation permit:

   a. A sketch of a typical portion of the development showing the flow path of run off.

   b. An estimated construction schedule for the uncompleted portions of the canal system as shown in ITT Community Development Corporation Drawing No. 06-1317, sheet 1 of 1.

Sincerely,

W. E. Linne, Acting Chief
Bureau of Permitting

WEL/wcb

cc: Mr. Ketteringham
Mr. Barnes
Dr. Thebaraj

February 17, 1972

RECEIVED Barnes Watkins
FEB 22
DEPT. OF POLLUTION CONTROL
BUREAU OF PERMITTING

M E M O R A N D U M

TO: Mr. W. E. Linne

THRU: John Ketteringham

FROM: J. W. Carr

SUBJECT: Canal Operating Permit Applications
ITT Community Development Corporation
Palm Coast Project

Following the February 15, 1972 meeting with Mr. John A. Barton, Chief Engineer, Palm Coast Project, a request was voiced concerning the written approval of the proposed sampling points and type of samples required by the Department of Pollution Control. Due to the present criteria for Class III waters, the following verbal agreement of sampling was suggested. A continuous monitoring and weekly monitoring of criteria in compliance with Chapter 17-3.09: Class III waters - recreation - propagation and management of fish and wildlife follows.

Continuous monitoring of canal waters and intracoastal waters in order to determine compliance with Class III water criteria. 17-3.09, (2) pH, (3) Dissolved Oxygen, (6) Deleterious - Salinity, (8) Temperature (7) Turbidity. Weekly monitoring of canal waters and intracoastal waters in order to determine compliance with Class III water criteria. 17-3.09, (4) Bacteriological - MPN, (1) Sewage, industrial wastes, or other wastes, (6) Deleterious - COD, BOD, Ammonia Nitrogen, Nitrate Nitrogen, Organic Nitrogen, Total Nitrogen, Ortho Phosphate, Total Phosphate.

Mr. W. E. Linne February 17, 1972

All of the sampling times were to be correlated with tidal conditions. All samples were to be taken one foot below the surface except at sampling points #5, #3, #1 where bottom samples were to be included.

It is recommended by this regional office that all sampling points, as shown, be approved and that an operating permit be withheld until sufficient data can be evaluated during the critical summer months period.

JWC:mh

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

NCENT D. PATTON
EXECUTIVE DIRECTOR

DAVID H. LEVIN
CHAIRMAN

April 26, 1972

Flagler County
Dredge and Fill
NE 4-72-81

EA		DDE		DE
ENG	CONST	OPS	COMP	RE
CHF	CHF	CHF	AUD	GolC
ASST	S&I CHF	PO	DUO	SFT
DESG	QA	NAV	MGT	PER
PLAN	TECH	PROGR	F&A	SUP
SURV	O/E & C/A	APC	COST	OAS
PROG	ASST (A)	PHYS-ST	DISB	ADP
CD		WDM	EXAM	PAO
SVC		ENF	PROP	SCTY
WE		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY _____
IN _____ DATE _____

ITT Community Development Corp.
1000 State Road 100
Post Office Box 878
Flagler Beach, Florida 32036

Attention: Mr. John A. Barton

Subject: Request for certification in accordance with Section 21 (b), Public Law 91-224, removal of connections (9 places) to connect proposed upland canal system to Club House Waterway

Dear Sir:

In response to your request we have reviewed the data submitted and find that it is not inaccordance with conditions No's. 5 and 6 of our letter of February 28, 1972. In addition, it is our determination that the requested certification shall only cover those canals immediately south of Young Parkway as depicted on drawing No. 06-1317, sheet 1 of 1.

It is recommended that drawing No. 06-1317 be made a part of your application for certification and revised to reflect conditions No's 5 and 6 of our February 28, 1972 letter. In lieu of submitting this data directly to this office please submit it thru our Regional Office in Jacksonville.

Please advise if you have any questions.

Sincerely,

B. A. Barnes, P.E.
Bureau of Permitting

BAB/mk

cc: J. Ketteringham
Corps of Engincers
Board of Trustees
Wade Hopping

STATE OF FLORIDA

DEPARTMENT OF POLLUTION CONTROL

SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

ENT D. PATTON
CUTIVE DIRECTOR

March 8, 1972

DAVID H. LEVIN
CHAIRMAN

Flagler County IW
Palm Coast Project
(ITT Community Development Corporation)
Canal System

EA		DDS		DE
ENG	CONST	OPR	COMP	RE
CHF	CHF	CHF	AID	OofC
ASST	S&I CHF	PO	BUD	SFT
DESG	QA	NAV	MGT	PER
PLAN	TECH	PROGR	F&A	SUP
SURV	O/E & C/A	APR	COST	OAS
PROG	ASST (A)	DIST ST	DISB	ADP
CD		ADM	EXAM	PAO
SVC		ENF	PROP	SCTY
VE		TECH		IAC
		STAT		
		PLT		
		MEP		

ACTION TAKEN BY _____
IN _____ DATE _____

P.69-897

Mr. E. W. Pritchard
Vice President, Operations
1345 Avenue of the Americas
New York, New York 10019

Dear Mr. Pritchard:

Reference is made to permit to operate applications ~~and attached~~ copies of Water Quality Engineering Study of Palm Coast Canals relative to the Palm Coast Project Canal System, and our letter of February 28, 1972, indicating our acceptance of the Palm Coast Project Canal System subject to certain specified conditions.

As a revision to our letter of February 28, 1972, the canal system presently under construction (as shown in ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 7, 1972) is acceptable to this Department subject to the following:

1. Waters from canals as construction is completed and from the Intracoastal Waterway shall be monitored as indicated below at stations specified in the ITT Community Development Corporation Drawing No. 06-1317 sheet 1 of 1 dated February 2, 1972.

Required Examinations	Frequency & Sampling Depths
Type I Analyses: Dissolved Oxygen, pH, Salinity, Temperature, and Turbidity at Stations No. 1, No. 3, No. 5, No. 7, No. 12, No. 16, No. 18, No. 20, No. 21, No. 22, No. 23, and No. 25.	Continuous at Mid-Depth
Type II Analyses: Dissolved Oxygen, pH, Salinity, Temperature, Turbidity, BOD, Coliform Organisms (MPN), Oils and Greases, Organic Nitrogen, Ammonia Nitrogen, Nitrate Nitrogen, Total Nitrogen, Ortho Phosphates, Total Phosphates, Pesticides, and Herbicides at all stations.	Twice Monthly at Bottom, Mid-Depth and Surface, Except Surface Only for Oil and Grease Samples

Sampling times shall be correlated with tidal conditions.

Monthly operation reports containing results of this monitoring program shall be submitted to the DPC Northeast Florida Regional Office, 4441 Emerson Street, Jacksonville 32207 and this Office.

2. In reference to Chapter 17-4 FAC, the issuance of an operation permit must be based upon actual substantiation that Florida water quality criteria specified in Chapter 17-3 FAC is being complied with throughout the canal system. In this particular case monitoring results for an entire year including the critical summer months, are required by this Department for evaluation toward the issuance of an operation permit.

3. Appropriate permits from the State of Florida Internal Improvement Trust Fund and the Corps of Engineers as well as Public Law 91-224 certification shall be obtained prior to the construction of canals.

4. Portable oxygenation-circulation devices shall be installed in finger coves farthest removed from the Intracoastal Waterway and other points, if necessary to insure compliance with State water quality criteria. Such devices shall be available for utilization whenever needed.

5. Connection of canals to eliminate dead ends is recommended where practical for increasing circulation and improving canal water quality.

6. In addition to the results of monitoring as called for in item (1), the following shall be submitted to this Department prior to our issuance of an operation permit.

   a. A sketch of a typical portion of the development showing the flow path of run off.

   b. An estimated construction schedule for the uncompleted portions of the canal system as shown in ITT Community Development Corporation Drawing No. 06-1317, sheet 1 of 1.

Your cooperation in this matter will be appreciated.

Sincerely,

W. E. Linné, Acting Chief
Bureau of Permitting

WEL/wcb

cc: Corps of Engineers, Mr. Ketteringham, Mr. Barnes, Dr. Thabaraj
Mr. Barton

SAJSP Permits ~~(69-897)~~ 72-0605 8 February 1972

Mr. Michael Orley
Research Assistant
Florida Audubon Society
P. O. Drawer 7
Maitland, Florida 32751

Dear Mr. Orley:

This is in reply to your letter of 5 November 1971 concerning a permit issued to Palm Coast Development Corporation to dredge a canal connecting with the Intracoastal Waterway in Flagler County.

Department of the Army permit (69-897) was issued for this work on 25 February 1970. No Environmental Impact Statement was requested and none was made.

For your information, no canals were connected to Matanzas River, but to a land cut of the Intracoastal Waterway that extends from Matanzas River to Smith Creek.

Inclosed for your ready reference is a copy of the permit drawing.

Sincerely yours,

1 Incl
Cy pmt dwg in 3 sheets

B. M. GOODE
Chief, Permits & Statistics Branch

Mr. Cooper/mh/2211

Florida Audubon Society
"The Voice of Conservation"
P. O. DRAWER 7 MAITLAND, FLORIDA 32751 TELEPHONE 305 647-2615

November 5, 1971

DDE				DE
ENG	CONST	OPR	COMP	RE
CHF	CHF	CHF	AUD	Ops
ASST	ASST (A)	ASST	BUD	SFT
DESG	S&I CHF	PLT	MGT	PER
PLAN	QA	MEP	F&A	SUP
SURV	TECH	RM	COST	DAS
PROG	VE	NAV	FIN	ADP
CD		APC	DISB	PAO
SVC		PO	EXAM	SCTY
		APMTS	PROP	IAC
		STAT		

ACTION TAKEN BY _____
IN _____ DATE _____

Mr. Gail Oren
Chief of Operations
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida.

Dear Mr. Oren,

We are evaluating the feasibility of the Palm Coast Development Project and are interested chiefly in the potential environmental hazards that might result from the canal systems.

We are also curious as to whether any permits have been granted, or Environmental Impact Statements issued for the connection of any of the canals to the Matanzas River. If so what is the permit number and when was it issued?

Any information that you could furnish me with respect to Environmental Impact would be greatly appreciated.

Very Truly Yours,
Michael Oxley
Michael Oxley
Research Assistant

cc. Mr. Hal Scott.

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

CENT D. PATTON
ECUTIVE DIRECTOR

DAVID H. LEVIN
CHAIRMAN

October 27, 1971

Flagler County

8, 69-877, 70-501, 70-411, 70-707, 70-708, 70-709
72-0605

AG	CONST	DPC	COMP	RE
CHF	CHF	CHF	AUD	OelC
ASST	ASST (A)	ASST	BUD	SFT
DESG	S&I CHF	PLT	MGT	PER
PLAN	QA	MEP	F&A	SUP
SURV	TECH	RM	COST	
PROG	VE	NAV	FIN	
CO		APC	DISB	
SVC		PO	EXAM	
		STAT	PNCP	

DATE

Chief, Operations Division
Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32201

Attention: Mr. Gail G. Gren

Subject: ITT Levitt Development in Flagler County

Dear Sir:

Please be advised that the proposed meeting with ITT Levitt personnel will be held in this office on Wednesday, November 3, 1971 at Eleven A.M.

Sincerely,

for W. E. Linne, Acting Chief
Bureau of Permitting

WEL/bmk
cc: J. Ketteringham
K. Hoffman
Mr. Hopping
J. Barton

Jax Jacksonville wat

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
SUITE 300, TALLAHASSEE BANK BUILDING
315 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32301

ERNEST D. PATTON
EXECUTIVE DIRECTOR

DAVID H. LEVIN
CHAIRMAN

October 11, 1971

Flagler County
Dredge and Fill Certification
NE 8-70-20
DF-18-109

72-0505

ITT Levitt Development Corporation
Post Office Box 878
Flagler Beach, Florida 32036

Attention: Mr. John A. Barton

Subject: ITT Levitt Development in Flagler County

Dear Sir:

At our meeting on August 16, 1971 it was agreed that your company would conduct additional studies on the overall project. These studies would include a layout of the entire project and a hydrographic study to enable an evaluation to be made to determine exchange of water in the canal system.

Please advise as to the status of the above in order that we may schedule a meeting in the near future.

Sincerely,

B. A. Barnes, P.E.
Bureau of Permitting

BAB/mk
cc: Corps of Engineers(G. G. Gren)
J. Ketteringham

SAJKS Permits 1 September 1971

Mr. John A. Barton, Chief Engineer
ITT Levitt Development Corporation
1000 State Road 100, P.O. Box 878
Flagler Beach, Florida 32036

Dear Mr. Barton:

Reference is made to your 24 August 1971 letter and conference held in this office 25 August 1971 regarding the work underway at Palm Coast Subdivision.

According to field reports, plugs have been placed in St. Joe Canal without permit. Since we consider this canal to be navigable waters of the United States, the plugs should be removed. We also understand a dozer has done some snagging and bank grading within the right-of-way of the Intracoastal Waterway. This work is also illegal without a permit and should be stopped.

The turbidity control measures outlined in your letter of 24 August 1971 for completion of the Club House Waterway portion of your Subdivision are acceptable, except that we do not believe the proposed siltation socks will help and can be eliminated if desired. We understand the 9,000 cubic yards remaining is clean-up or maintenance dredging. No new connections or extensions should be made without a permit, since this existing canal is now a navigable waterway.

The need for additional permits to connect to this canal and to complete other portions of the Subdivision where navigable waters are involved will be the subject of further correspondence after coordination with the State. In this connection, we plan to be represented at the meeting which the Air and Water Pollution Control Administration plans to hold with you within the next couple of weeks.

Sincerely yours

GAIL G. GREN
Chief, Operations Division

CF: Resident Engineer, Palatka
Mr. Barnes, A&WPC ADM,
Tallahassee

Mr. Goode/gw/3423

U. S. MAIL IN PERMITS SECTION

ITT Levitt Development Corporation

1000 State Road 100, PO Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

August 24, 1971

Department of the Army
Jacksonville District
Corps of Engineers
Federal Building, P. O. Box 4970
Jacksonville, Fla. 32201

Gentlemen:

On our attached Exhibit Drawing #1001, we have outlined the procedure which we submit for your approval to complete our dredging in Club House Waterway of our Palm Coast Subdivision.

According to our computations, there is about 9,000 cubic yards of material to be excavated from the canals to complete this phase of our project. It is our intention to pump the material in the spill area as outlined on the drawing, allowing it to pass through two retaining basins; the second retaining basin to contain a siltation sock as detailed on the drawing to retain the initial suspended and colloidal materials.

As shown on the drawing, we propose two other siltation socks near the return water discharge into Club House Waterway. It is my opinion that this method of retention should solve our turbidity problem. However, we will have our inspection forces closely watching this operation to insure against any violation of the turbidity requirements of our permit. If a problem develops due to the colloidal particles not clarifying, we shall stop the dredging and wait until the water does clarify or add a chemical coagulant to quicken the settling process.

I trust that this method will meet with your approval and I will be on hand at 10:00 a.m., August 25, at your Jacksonville office to discuss the situation with you.

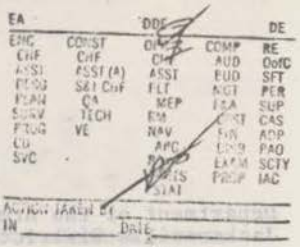
Yours truly,

John A. Barton

John A. Barton
Chief Engineer

JAB:jt

'71 AUG 12 PM 1:47



RSR NR 2 TNX WU A

M

CORP ENGRS JAX

~~1-69-877~~
72-0505

PA300

JN P DTA067 HT PDF TDDT FLAGLER BEACH FLO 12 1235P EDT

MR GREN, CHIEF OF OPERATIONS

DEPT OF THE ARMY JACKSONVILLE DIST CORPS OF ENGINEERS FEDERAL BLDG PO BOX 4970 JACKSONVILLE FLO 32201

WE HAVE COMPLIED WITH YOUR CEASE AND DESIST ORDERS OF TODAY AUGUST 12 1971 I WILL SEND OR DELIVER TO YOU THE EARLY PARY OF NEXT WEEK. A PLAN TO COMPLETE OUR CANAL EXCAVATION WORK. PURSUANT TO OUR TELEPHONE CONVERSATION THIS MORNING

JOHN BARTON CHIEF ENGINEER ITT LEVITT CORP PALM COAST

12 1971.

(132).

T

GAWU '71 AUG 11 PM 4:42 [illegible]

SR NR 1 GOVT PD 11 AUGUST 1971

Tel 439-2321
TO MR JOHN A BARTAN CHIEF ENGINEER ITT LEVITT DEVELOPMENT CORPORATION 1000 STATE ROAD 100 PHONE 439-2321 FLAGLER BEACH FLA

REPLY ATTENTION SAJSP PERMITS 69-897 72-0005

1. AN INSPECTION BY REPRESENTATIVES OF THE PALATKA OFFICE OF THE CORPS OF ENGINEERS, THIS DATE, REVEALS THAT THE DREDGING OPERATIONS BEING PERFORMED IN THE VICINITY OF THE WORK RECENTLY COMPLETED UNDER THE ABOVE REFERENCED DEPARTMENT OF THE ARMY PERMIT DOES NOT CONFORM WITH THE WATER QUALITY STANDARDS AS OUTLINED IN THE WATER QUALITY PAPER FURNISHED YOU AT THE TIME THE PERMIT WAS ISSUED ON 25 FEBRUARY 1970. YOU ARE THEREFORE REQUESTED TO CEASE AND DESIST ALL OPERATIONS IMMEDIATELY UNTIL NECESSARY STEPS HAVE BEEN TAKEN TO PROPERLY POND THE DREDGE MATERIAL AND CONTROL THE FINES BEING ALLOWED TO RETURN INTO THE WATERWAYS IN THE AREA.

2. YOU ARE REQUESTED TO ACKNOWLEDGE RECEIPT OF THIS MESSAGE WITH INFORMATION AS TO YOUR INTENTIONS IN THE MATTER.

DISTRICT ENGINEER U S ARMY ENGINEER DISTRICT

CLR SAJSP Permits (69-897) Corps Green

1 1 112100Z AUG 71 RR UU

NO

CORPS OF ENG, JAX, FL

MR. JOHN A BARTAN, CHIEF ENGINEER
ITT LEVITT DEVELOPMENT CORPORATION
1000 STATE ROAD 100
FLAGLER BEACH, FLORIDA 32036 TELEPHONE 439-2321

UNCLAS

SAJSP PERMITS (69-897) 72-0603

1. AN INSPECTION BY REPRESENTATIVES OF THE PALATKA OFFICE OF THE CORPS OF ENGINEERS, THIS DATE, REVEALS THAT THE DREDGING OPERATIONS BEING PERFORMED IN THE VICINITY OF THE WORK RECENTLY COMPLETED UNDER THE ABOVE REFERENCED DEPARTMENT OF THE ARMY PERMIT DOES NOT CONFORM WITH THE WATER QUALITY STANDARDS AS OUTLINED IN THE WATER QUALITY PAPER FURNISHED YOU AT THE TIME THE PERMIT WAS ISSUED ON 25 FEB 1970. YOU ARE THEREFORE REQUESTED TO CEASE AND DESIST ALL OPERATIONS IMMEDIATELY UNTIL NECESSARY STEPS HAVE BEEN TAKEN TO PROPERLY POND THE DREDGE MATERIAL AND CONTROL THE FINES BEING ALLOWED TO RETURN INTO THE WATERWAYS IN THE AREA.

2. YOU ARE REQUESTED TO ACKNOWLEDGE RECEIPT OF THIS MESSAGE WITH INFORMATION AS TO YOUR INTENTIONS IN THE MATTER.

S. G. COOPER, Jr., ENGR TECH 2211

GAIL G. GREEN, CH OPNS DIV 2225

STATE OF FLORIDA

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 224-2101

April 8, 1971

EA		DDE		DE
ENG	CONST	OPR	COORD	RE
CHF	CHF	CHF	AUD	CONC
ASST	ASST (A)	ASST	BUD	SFT
DESG	S&I CHF	PLT	MGT	PER
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SVC		PA	EXAM	SCTY
			PROP	MAC
		STAT		

ACTION TAKEN BY _____

IN _____ DATE _____

ITT Levitt Development Corporation
28 West Flagler Street
Miami, Florida 33130

Rec'd 4-9-71
Cert.

Gentlemen:

It has been reported that your Corporation is in the process of developing lands in Flagler County which border on the Intracoastal Waterway. This is to advise that state and federal permits are required prior to making upland connections with the Intracoastal Waterway.

It would be appreciated if you would furnish us with a copy of your subdivision plats showing the relationship of any upland canals with the Intracoastal Waterway.

Sincerely,

John DuBose

John DuBose, Director
Field Operations Division

JD/bs

cc: Lt. D. B. Newbold
Corps of Engineers ✓

ITT Levitt Development Corporation

1000 State Road 100, PO Box 878
Flagler Beach, Florida 32036
Telephone (904) 439-2321

January 12, 1971

		DDE	
ENG	CONST	OPR	COMP
CHF	CHF	CHF	AUD
ASST	ASST (A)	ASST	BUD
DESG	S&I Chf	PLT	MGT
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ACTION TAKEN BY

IN DATE

Department of the Army
Jacksonville District
Corps of Engineers
Federal Building
Post Office Box 4970
Jacksonville, Florida 32201

Re: Dock Permit #SAJAP~~69-897~~ 72-0605

Attention: Mr. A. L. McKnight
Chief, Operations Division

Gentlemen:

The above referenced permit is an approved application to install a dredged entranceway off the Intracoastal Waterway on or about M.P. 63± in Flagler County, Florida.

This is to certify that the ITT Levitt Development Corporation has completed all of the work in accordance with the construction drawings and specifications pertinent to the above permit.

Yours truly,

John A. Barton

John A. Barton
Chief Engineer, P.E. #14296

JAB:jt

PART B.–REPORT OF MOBILE DISTRICT ENGINEER ON MAINTENANCE DREDGING IN PENSACOLA HARBOR, MARCH 9 THROUGH APRIL 15, 1973

I. FACTS

1. On 21 December 1972, the Mobile District, through its Operations Division, forwarded a print to Federal and to State of Florida environmental agencies, showing the area involved in the proposed Pensacola Harbor maintenance dredging, inclusive of proposed spoil areas. The cover letter stated the areas had been used without difficulty in the past and that no pollution problems were anticipated. Comments on the plan of spoil disposal were requested at an early date. (Exhibits 1 and 2)

2. On 9 January 1973, the Executive Director of the Florida Board of Trustees of the Internal Improvement Trust Fund advised the Mobile District that while the spoil disposal areas appeared to remain the same as past sites, the Pensacola Bay area was of concern to them, due to the recent severe fish kills and water quality conditions in the vicinity of the Fort Pickens Aquatic Preserve. The Executor Director stated that their area inspector would review the area for comment regarding the suitability of the spoil areas under present conditions. (Exhibit 3) However, the Mobile District was never advised subsequently of the inspector's observations.

3. The Mobile District

(a) forwarded the advance Notice to Prospective Bidders on 9 January 1973.

(b) advertised for bids on 22 January 1973, and

(c) opened bids on 13 February 1973.

4. The District Engineer responded to the Florida Board of Trustees on 16

February 1973 (Exhibit 4) stating, in essence, that

(a) the proposed work was several miles north of the northern limits of the Aquatic Preserve,

(b) the Mobile District did not believe the work would have any effect on water quality near the Preserve,

(c) maintenance dredging of these channels had been a continuing action over a period of many years, with dredged materials deposited in open water.

(d) no upland spoil disposal areas were currently available,

(e) it was urgent that the maintenance work be accomplished to avoid restricting traffic into the Port of Pensacola.

(f) The CEQ had advised the House Committee on Merchant Marine and Fisheries by letter of 13 July 1972 (Exhibit 5) that maintenance dredging of Federal channels could continue pending the preparation of an Environmental Impact Statement where such dredging is a "continuing activity", and

(g) The EIS was expected to be filed with CEQ about 1 June 1973.

5. This maintenance dredging of Pensacola Harbor is a "continuing activity" as permitted by the CEQ 13 July 1972 letter.

6. On 11 January 1973, the EPA advised the District Engineer that:

(a) the suitability of the spoil for open water disposal was unknown, since no core data was included with the Corps coordinating letter of 21 December 1972,

(b) the criteria in Section XI of EPA's "Water Quality Considerations

for Construction and Dredging Operations, revised April 1971" should be used to determine the suitability of the spoil for open water disposal,

(c) if the spoil is not polluted by these standards and contains primarily sand, no water quality problems are anticipated, and

(d) if the spoil is polluted to the extent that it will cause environmental damage to Pensacola Bay, it should be contained behind dikes in an approved upland area for a sufficient length of time so that the effluent will not violate the water quality standards of Pensacola Bay. (Exhibit 6)

7. The District Engineer responded to EPA on 16 February 1973.(Exhibit 7) His letter was essentially the same as the one to the Florida Board of Trustees, except that it stated that the Mobile District was unable to accomplish the necessary sampling prior to beginning work due to the lack of adequate time; but that we expect to accomplish sampling prior to the next dredging in the area.

8. On 26 January 1973, the first of two responses from the Florida Game and Fresh Water Fish Commission was received. (Exhibit 8). Based on the review by its field biological inspection team, the Commission stated that:

(a) open water disposal sites are damaging to marine communities;

(b) siltation and turbidity from dredging and spoiling operations disrupts benthic communities, covers productive grass flats, releases toxic substances tied up in bottom sediments, and decreases available oxygen content in the water column; and

(c) because of such reasons, they had continually recommended to the

Corps that upland sites be secured for spoil disposal. In conclusion, the Commission recommended that the project not go forward until alternate upland disposal sites are located.

9. On 16 February 1973, the District Engineer's response, which was essentially the same as responses to other agencies, was forwarded to the Florida Game and Fresh Water Fish Commission. (Exhibit 9)

10. The Commission forwarded a second letter to the Operations Division on 14 February 1973. (Exhibit 10). Based on a review by its environmental staff the Commission offered the following comments:

(a) the large dredge and spoil project will have a negative effect on waters of the Bay and associated ecosystem,

(b) the project as proposed, in their opinion, will significantly disrupt the existing resources of the Bay,

(c) a close evaluation of necessary dredging should be accomplished to reduce the biological impact of the proposed works,

(d) all open water disposal and unneeded dredging should be eliminated, and

(e) turbidities should be adequately controlled during all dredging operations, and

(f) in the opinion of the Commission, the biological impacts of the proposed action could be significantly reduced if the above recommendations were accepted.

11. On 22 February 1972, the Florida Department of Natural Resources

forwarded comments on the proposed dredging from its Survey and Management Office. (Exhibit 11). The agency's marine biologist reported, inter alia, that

(a) bay bottoms adjacent to the dredge project are sandy, silty and unvegetated, varying in depth from 17-33 feet,

(b) redredging silty sediments from existing channel bottoms should not have significant adverse effects on marine biological resources provided silt restraining devises are used to control turbidity and siltation,

(c) in open water disposal operations, it is impossible to contain fine materials which can be dispersed throughout the Bay, disturbing productive marine areas,

(d) dredge spoil from this project should either be placed on diked upland property or carried out of the Bay to a disposal site in the Gulf, and that there was no apparent need to have two approach channels to Pensacola Harbor.

12. It is essential to understand, at this point, that the Mobile District was of the considered judgment that it was essential that the maintenance dredging be performed. Not only had the CEQ specifically recognized that dredging which was a continuing maintenance project should continue, as evidenced by its 13 July 1972 letter; but the physical condition of the channel of Pensacola Harbor had suffered major shoaling and was in the state of posing a potential threat to proper safety of navigation. Specifically, it is to be noted that on 28 November 1972, soundings based on mean low water were taken in the project area. Subsequently cross sections of 19 stations were plotted from the soundings.

The stations and cross sections are depicted on Pensacola Harbor Drawings 2-4. (Exhibit 11A). These cross sections indicate that shoaling has resulted in the project depth being maintained at only four of the 19 stations. Maximum shoaling above project depth varied from 1.0 to 17.0 feet. These exhibits, which were included as a part of the contract awarded to Standard Dredging Co., substantiate the District action that it was urgent that the maintenance work be accomplished.

13. The Mobile District awarded the contract to Standard Dredging Corporation on 26 February 1973. (Exhibit 11B).

14. The Mobile District issued to the contractor the Notice to Proceed, on 7 March 1973.

15. On 7 March 1973, the Bureau of Sport Fisheries and Wildlife of the U. S. Department of Interior responded to the original notice of 21 December 1972. (Exhibit 12). The letter stated that they "understand that the Environmental Protection Agency has found certain areas shown on the plan to be polluted". The Bureau of Sport Fisheries and Wildlife concurred in the EPA recommendation that spoil "from these areas should not be deposited in open water". The Bureau of Sport Fisheries and Wildlife recommended that diked spoil areas not be constructed in wetlands. It is highly significant to note that the Mobile District was never advised by EPA that such agency had "found certain areas shown on the plan to be polluted."

16. The dredging contractor commenced dredging on 9 March 1973.

17. On 14 March 1973, Mr. Harvey L. Corey, Jr., Authorized Representative

of the Contracting Officer, by letter (Exhibit 13), requested the contractor to furnish a cost estimate whereby the discharge from the dredge would be under the water surface, in an attempt to minimize the turbidity plume.

18. The contractor responded with a cost proposal (Exhibit 14), and the change was directed. (Exhibit 15), on 23 March 1973.

19. This change had been precipitated by a representative of the Florida Department of Pollution Control having been in the project area on 14 March 1973 checking turbidity. (According to Paragraph 21 of the Complaint filed in the lawsuit, turbidity from the dredging on 14 March was 1,045 Jackson units above background level. This sample probably represents the highest value obtained among several samples. Measurement of turbidity in Jackson units is generally accurate to plus or minus 10 percent.)

20. On 15 March 1973, Mr. William T. Young, Regional Biologist Florida Department of Pollution Control, telephoned Mr. E. B. Wallace, Operations Division, and made the following two recommendations to reduce turbidity from the discharge of dredge spoil:

(a) stop leaks in the dredge pipeline and

(b) change from above water to underwater discharge.

21. Mr. Wallace took immediate action to effect recommendation (a) and recommendation "b" was already in the process of being implemented.

22. The Director of the Enforcement Division, EPA Region 4, telegraphed the District Engineer, on 23 March 1973 that the Florida Department of Pollution Control had advised them the current dredging was violating the State turbidity

standard. EPA recommended the dredging be stopped pending an investigation with State personnel to establish acceptable procedures for continued dredging. (Exhibit 16).

23. The Mobile District advised EPA by telegram on 26 March 1973 (Exhibit 17) that action had been initiated, in accordance with the recommendation of Mr. Young, to modify the spoil procedure by providing for underwater discharge. The project was not stopped.

24. On 3 April 1973, the modification was completed. Spoil was discharged underwater for the duration of the dredging.

25. On 9 April 1973, the Bureau of Sport Fisheries and Wildlife, U. S. Department of the Interior, telegraphed the District Engineer, (Exhibit 18) that:

(a) potentially polluted spoil materials were being placed directly into the Bay, contrary to the recommendations of the Bureau and EPA,

(b) The Bureau did not understand why the project was not modified, in accordance with their recommendations of 7 March 1973, and

(c) that the project be immediately so modified, or dredging operations be stopped, and the matter referred to the Chief of Engineers for resolution.

26. The District Engineer advised the Bureau by telegram of 10 April 1973 (Exhibit 19) that every effort was made to meet the requirements of all interested Federal and State agencies. However, they were advised that no upland areas were currently available, it was urgent that the maintenance work be accomplished to avoid restricting the movement of traffic into the Port of Pensacola, and

they were advised of the confirming views of CEQ.

27. Maintenance dredging was completed on 15 April 1973.

28. On 16 May 1973, the Department of Interior advised the District Engineer of their disagreement with the actions which the Mobile District had taken, with their reasons stated therein. (Exhibit 20). To alleviate misunderstandings in the future, they suggested a meeting between the Corps, EPA, and the Department of Interior during the week of 16 July 1973.

29. The Mobile District responded to the Bureau on 21 May 1973, suggesting that the meeting be held on 18 July 1973, and restating the Corps' position. (Exhibit 21).

30. In May 1971, the Mobile District conducted a limited sampling program of dredge material from its project harbors.(Exhibit 22). EPA has published criteria for open water disposal of dredged spoil in Section XI of its pamphlet entitled, "Water Quality Considerations for Construction & Dredging." Criteria have been established for eight parameters (pollutants). The two samples taken from Pensacola Harbor, indicated on Exhibit 22, exceeded the criteria for all parameters except oil and grease. However, investigations by the Mobile Bay Technical Committee,* composed of representatives from the Corps, EPA, the Alabama Water Improvement Commission and the Alabama Department of Conservation, indicated that the criteria were rather arbitrarily established without factual data pertaining to water quality and biological considerations. At the completion of its base line environmental investigation, the Committee recommended the criteria be revised and that evidence substantiating the criteria be clarified.

*(The conferees of the 1970 Enforcement Conference held in Mobile, Alabama by the then Federal Water Quality Administration (now EPA) recommended that a technical committee be formed to study the effects of dredging activities in Mobile Bay.)

EPA is presently studying the existing criteria, but has not issued revised criteria.

31. It is to be noted that the EPA did not comment on whether the proposed spoil disposal plan complied with Section 404 of the 1972 Amendments.

32. Without a reasonable mixing zone, there is no way navigation projects can be maintained without exceeding the turbidity standard of 50 Jackson units above background.

33. No steps to control turbidity were taken other than to modify the operation for underwater discharge. Dredge spoil was discharged 19 days above water and 10 days underwater. Eight days were lost to adverse weather conditions subsequent to 15 March 1973.

34. The Florida Department of Natural Resources had suggested (Exhibit 11) that there was no need to have two approach channels. The reason for two channels is to eliminate the need for a turning basin. Vessels utilizing the harbor can enter from either channel and exit the other, without turning. The alternative of providing a turning basin in shallow water would require removal of more material, than the present channel system. Therefore, this suggestion is totally unfeasible.

The Florida Department of Natural Resources had also suggested that upland disposal sites be used. Adequate upland spoil disposal areas for over 1.4 million cubic yards of material simply are not available. Although even the Department of Interior stated on 9 April 1973 that less damaging alternatives are available, no state or federal governmental agency has suggested that specific upland spoil

disposal sites are available. This is substantiated by the fact that the City of Pensacola was able to locate an upland disposal site for only 12,000 of its proposed 60,000 cubic yards of maintenance dredging.

35. A draft Environmental Impact Statement for maintenance of Pensacola Harbor is being prepared. While it was originally indicated that the Statement would be completed in June 1973, the draft EIS will be circulated for review and comment by governmental agencies and the general public in September 1973. Alternative methods of dredge disposal will be discussed in the EIS. The final EIS should be filed with CEQ in December 1973.

36. The State of Florida has furnished, through the Department of Pollution Control, a report showing seven turbidity samples taken on 14 March 1973. (Exhibit 23). Six samples were taken around the dredge, with none taken further than 150 feet from the dredge.

DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 2288
MOBILE, ALABAMA 36628

REPLY TO
ATTENTION OF:

SAMOP-O

21 December 1972

Florida Game and Fresh Water Fish Commission
River Basins Project
P. O. Box 1840
Vero Beach, Florida 32960

Dear Sirs:

Inclosed is a print showing proposed dredging on the project listed below.

Pensacola Harbor, Florida

The print outlines the location of the proposed spoil areas to be used for this work. These areas have been used without difficulty in the past, and no pollution problems are anticipated.

Please send us your comments on the plan of spoil disposal at the earliest practicable date.

Sincerely yours,

R. W. DAVIS
Chief, Operations Division

1 Incl
Print-Pensacola Harbor
File 2A-5-4-83

Same letter and print sent to:

State of Florida
Department of Natural Resources
Larson Building
Room 513
Tallahassee, Florida 32304

State of Florida
State Division of Health
Bureau of Sanitary Engineering
P. O. Box 210
Jacksonville, Florida 32201

United States Dept. of the Interior
Fish and Wildlife Service
Bureau of Sport Fisheries and Wildlife
Peachtree-Seventh Building
Atlanta, Georgia 30323

State of Florida
Department of Pollution Control
2562 Executive Center, East
Montgomery Building
Tallahassee, Florida 32301

State of Florida
Board of Trustees of the Internal
Improvement Trust Fund
Elliot Building
Tallahassee, Florida 32304

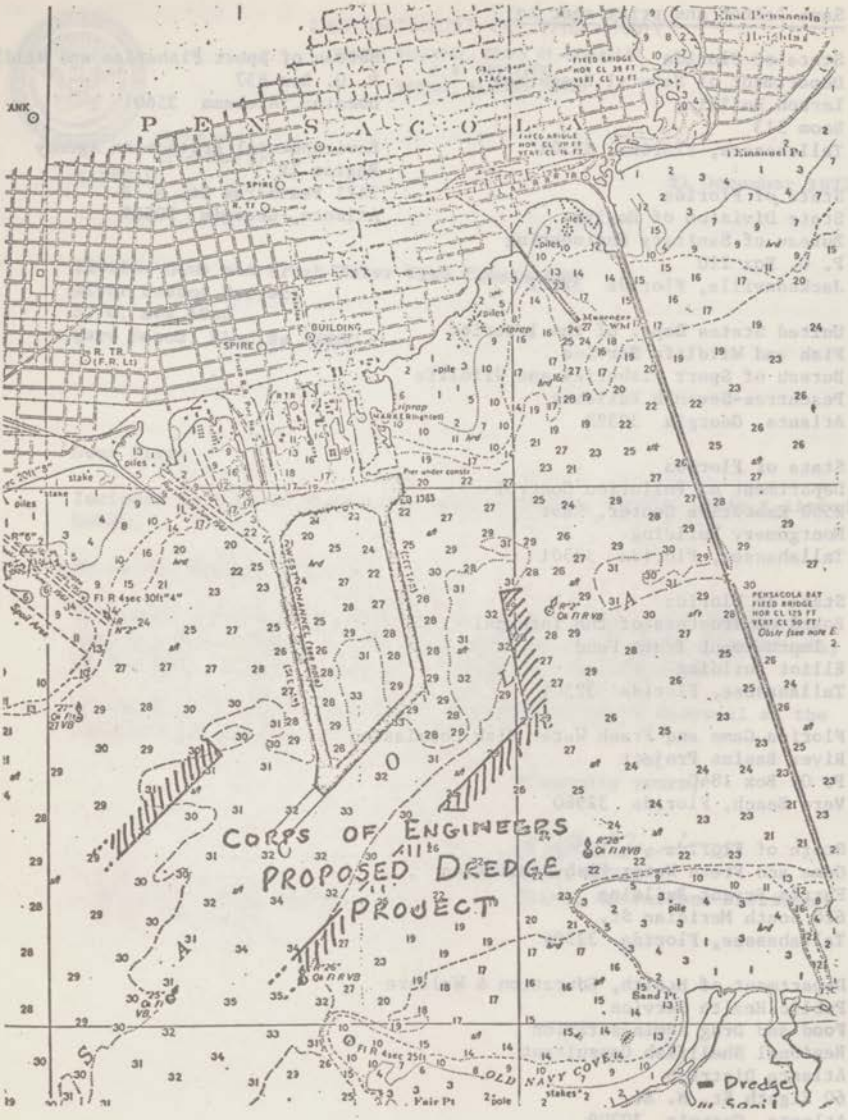
Florida Game and Fresh Water Fish Commission
River Basins Project
P. O. Box 1840
Vero Beach, Florida 32960

State of Florida
Game and Fresh Water Fish Commission
Farris Bryant Building
620 South Meridian St.
Tallahassee, Florida 32304

Department of Health, Education & Welfare
Public Health Service
Food and Drug Administration
Regional Shellfish Consultant
Atlanta District
60 Eighth St. N. E.
Atlanta, Georgia 30309

Bureau of Sport Fisheries and Wildlife
P. O. Box 837
Decatur, Alabama 35601

Environmental Protection Agency
Region IV
1421 Peachtree St. N. E.
Atlanta, Georgia 30309


CORPS OF ENGINEERS
PROPOSED DREDGE
PROJECT
PENSACOLA
East Pensacola Heights
Emanuel Pt
Bayou Chico
Sand Pt
OLD NAVY COVE
Fair Pt
Dredge
Spoil

STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
ELLIOT BUILDING — TALLAHASSEE, FLORIDA 32304

Joel Kuperberg
Executive Director

TELEPHONE 224-2101

January 9, 1973

Mr. R. W. Davis, Chief
Operations Division
Corps of Engineers, Mobile District
Post Office Box 2288
Mobile, Alabama 36628

Dear Mr. Davis:

Thank you for the notification regarding proposed dredging in the Pensacola Harbor. It appears that the project is a part of a maintenance dredging and that the spoil disposal areas will remain the same as past sites. We are requesting our inspector in the area to review the area for comment regarding the suitability of the spoil areas under present conditions. We will forward a copy of his observations.

The Pensacola Bay area is of concern to us due to the recent severe fish kills and water quality conditions in the vicinity of the Fort Pickens Aquatic Preserve (G-1). Attached, for your reference, is a copy of the Board of Trustees' resolution which established the aquatic preserve.

We appreciate the opportunity to work with the Corps of Engineers on spoil disposal locations and will be in contact with you as soon as our inspection is complete.

Sincerely,

Joel Kuperberg
Executive Director

JK/bcv

Enclosures

cc: Mr. John R. Van Norman
Trustees' Field Operations Division

RESOLUTION

SANTA ROSA COUNTY, FLA.
OFFICIAL RECORDS BOOK 518 PAGE 659

No. 70-15

WHEREAS, the State of Florida, by virtue of its sovereignty, is the owner of the beds of all navigable waters, salt and fresh, lying within its territory, with certain minor exceptions, and is also the owner of certain other lands derived from various sources; and

WHEREAS, title to these sovereignty and certain other lands has been vested by the Florida Legislature in the State of Florida Board of Trustees of the Internal Improvement Trust Fund, to be held, protected and managed for the long-range benefit of the people of Florida; and

WHEREAS, the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as a part of its overall management program for Florida's state-owned lands, does desire to insure the perpetual protection, preservation and public enjoyment of certain specific areas of exceptional quality and value by setting aside forever these certain areas as aquatic preserves or sanctuaries; and

WHEREAS, the ad hoc Florida Inter-Agency Advisory Committee on Submerged Land Management has selected through careful study and deliberation a number of specific areas of state-owned land having exceptional biological, aesthetic and scientific value, and has recommended to the State of Florida Board of Trustees of the Internal Improvement Trust Fund that these selected areas be officially recognized and established as the initial elements of a statewide system of aquatic preserves for Florida;

NOW, THEREFORE BE IT RESOLVED by the State of Florida Board of Trustees of the Internal Improvement Trust Fund:

12-18-70 829 P.

Circuit Court, By GVA

APPROVED AS TO FORM AND LEGALITY
TRUSTEES I. I. TRUST FUND - LEGAL
BY

Dec 18 3 29 PM '70

CLERK CIRCUIT COURT
SANTA ROSA CO., FLA.

COUNTY
OFFICIAL

THAT the state-owned lands within the following described boundaries be hereby recognized for their exceptional public value and dedicated in perpetuity as an aquatic preserve and as an element of a statewide system of aquatic preserves:

AQUATIC PRESERVE G-1

The sovereignty lands in Santa Rosa Sound, Pensacola Bay, Big Lagoon and Gulf of Mexico lying within the following described boundaries:

Begin at the intersection of the East line of lands of Ft. Pickens State Park, as located on Santa Rosa Island, with the mean high water line of Santa Rosa Sound; thence Northerly along a northerly projection of said East line of Ft. Pickens State Park to its intersection with the southerly line of the Intracoastal Waterway; thence Westerly 12 miles more or less along said southerly line of the Intracoastal Waterway to a point in projected Section 26, Township 3 South, Range 31 West; thence Southerly along the easterly line and projection thereof of the Intracoastal Waterway to the southerly mean high water line of Big Lagoon in said Section 26; thence Easterly along the said mean high water line to the most easterly point of Section 34, Township 3 South, Range 31 West; thence Southwesterly and Westerly along the mean high water line of the Gulf of Mexico to its intersection with the South line of Section 26 and the North line of Section 31, Township 3 South, Range 31 West; thence South 15,840 feet to a point in the Gulf of Mexico, thence Easterly along a line parallel with and 15,840 feet southerly of the said mean high water line to an intersection with a southerly projection of the East line of said Ft. Pickens State Park; thence Northerly along said southerly projection of the East line of Ft. Pickens State Park to its intersection with the mean high water line of the Gulf of Mexico on the southerly side of Santa Rosa Island; thence Westerly along the mean high water line of the Gulf of Mexico to its intersection with Pensacola Bay; thence Easterly along the mean high water line of Pensacola Bay and Santa Rosa Sound to the Point of Beginning.

AND BE IT FURTHER RESOLVED:

THAT it is hereby declared to be the purpose and intent of the State of Florida Board of Trustees of the Internal Improvement Trust Fund to set aside and manage the above described aquatic preserve in accordance with the management policies and criteria adopted and set forth by separate resolution adopted on the 21st day of October, A. D. 1969, for application uniformly to all elements of the statewide system of aquatic preserves.

IN TESTIMONY WHEREOF, the Trustees, for and on behalf of the State of Florida Board of Trustees of the Internal Improvement Trust Fund have hereunto subscribed their names and have caused the official seal of said State of Florida Board of Trustees of the Internal Improvement Trust Fund to be hereunto affixed, in the City of Tallahassee, Florida, on this 2nd day of November, A. D. 1970.

Governor

Secretary of State

(SEAL)
State of Florida Board of Trustees of the Internal Improvement Trust Fund

Attorney General

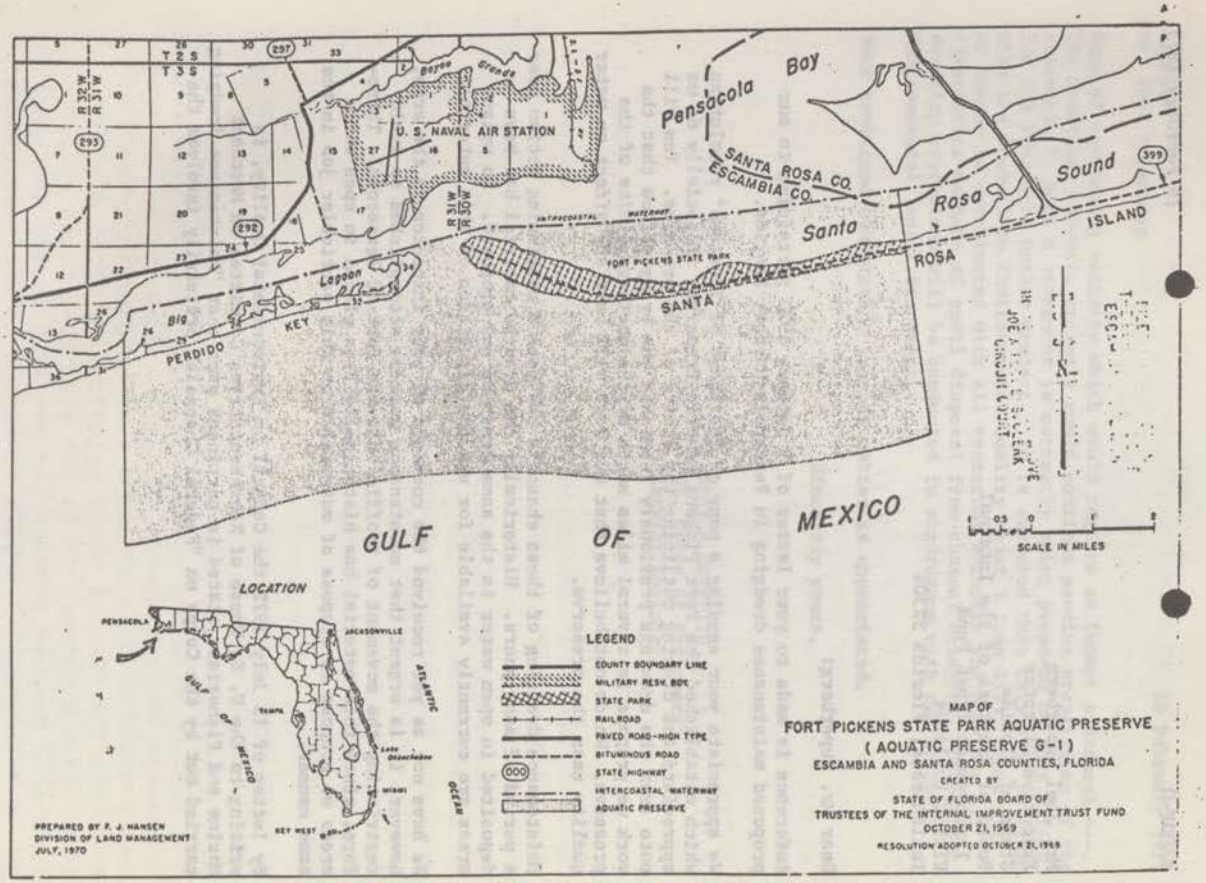
Comptroller

Treasurer

Commissioner of Education

Commissioner of Agriculture

As and Constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund


Pensacola Bay
U. S. NAVAL AIR STATION
SANTA ROSA CO.
ESCAMBIA CO.
Santa Rosa Sound
ISLAND
FORT PICKENS STATE PARK
SANTA ROSA
Lagoon
Big
PERDIDO KEY
GULF OF MEXICO
SCALE IN MILES
LOCATION
PENSACOLA
JACKSONVILLE
TAMPA
MIAMI
KEY WEST
LEGEND
COUNTY BOUNDARY LINE
MILITARY RESV. BDY.
STATE PARK
RAILROAD
PAVED ROAD-HIGH TYPE
BITUMINOUS ROAD
STATE HIGHWAY
INTERCOASTAL WATERWAY
AQUATIC PRESERVE
MAP OF
FORT PICKENS STATE PARK AQUATIC PRESERVE
(AQUATIC PRESERVE G-1)
ESCAMBIA AND SANTA ROSA COUNTIES, FLORIDA
CREATED BY
STATE OF FLORIDA BOARD OF
TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OCTOBER 21, 1969
RESOLUTION ADOPTED OCTOBER 21, 1969
PREPARED BY F. J. HANSEN
DIVISION OF LAND MANAGEMENT
JULY, 1970

SAMOP-O 16 February 1973

Mr. Joel Kuperberg
Executive Director
State of Florida
Board of Trustees of the Internal
Improvement Trust Fund
Elliot Building
Tallahassee, Florida 32304

Dear Mr. Kuperberg:

Reference is made to your letter of 9 January 1973 pertaining to our proposed maintenance dredging in Pensacola,Harbor, Florida.

We appreciate your sending a copy of the Board of Trustees' resolution which established the Fort Pickens Aquatic Preserve. Especially do we appreciate the drawing outlining the limits of the preserve. You will note from the drawings previously furnished you by my office that the work we propose is several miles north of the northern limits of the preserve. We do not believe that our work will have any effect on water quality near the preserve.

Maintenance dredging of these channels has been a continuing action over a period of many years. Historically the dredged material has been deposited in open water in the same areas as now proposed. No upland areas are currently available for use for deposition of this material.

We have not as yet received the comments of your inspector in the area; however, it is urgent that maintenance work be accomplished to avoid restricting the movement of traffic into the Port of Pensacola. Therefore, since this material has historically been placed in open water areas we propose to dispose of material from this particular job in the same manner.

By letter of 13 July 1972 the Council on Environmental Quality, in writing to the U. S. House of Representatives Committee on Merchant Marine and Fisheries, stated in pertinent part that "Maintenance dredging carried out by the Corps on "Federal Channels" ordinarily involves the

SAMOP-O 16 February 1973
Mr. Joel Kuperberg

type of continuing activity which would require an impact statement ---. The dredging, however, properly could continue pending preparation of the statement." Such a statement is currently being prepared by this office for the Pensacola Harbor project. It is expected that this will be filed with the Council on Environmental Quality about 1 June 1973. This will of course be coordinated with all concerned agencies and consider all alternative methods of spoil disposal from channel dredging. Subsequent dredging operations will be conducted in accordance with the approved Environmental Impact Statement.

Your continued cooperation in this matter is appreciated.

Sincerely yours,

HARRY A GRIFFITH
COL, Corps of Engineers
District Engineer

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

JUL 13 1972

Dear Mr. Casey:

Chairman Train has asked me to reply to your letter of June 27. In this letter, you requested our views on several issues involving the applicability of the National Environmental Policy Act's environmental impact statement requirement to maintenance dredging activities done or regulated by the Corps of Engineers. We are pleased to do so.

You first asked whether, in connection with maintenance dredging for a project completed prior to January 1, 1970, an environmental impact statement is required for dredging permits for the maintenance of channel depth. By referring to "permits" we assume that you are concerned with the non-Corps activities such as those carried out by State, local, or private parties for maintaining the entrance to piers and slips and which require Corps dredging permits. The maintenance dredging carried out by or for the Corps and ordinarily associated with the "Federal channel" would not require a permit under present law.

In most pre-1970 circumstances, under its regulations the Corps of Engineers would have granted a permit to the non-Corps party initially to dredge the entrance to the pier or slip and would have rarely included permission to engage in maintenance dredging. Thus the non-Federal party would have to obtain a further dredging permit to maintain the channel where siltation or other filling presents a problem. It is our view that these further post-1970 permits require the preparation and circulation of an environmental impact statement if the maintenance dredging operation involved constitutes a "major" and

"significant" Federal action, notwithstanding the fact that the [illegible] permit follows logically from the initial pre-[illegible] permit. This view is consistent with Section II of our Guidelines, which is partially quoted in your letter to us.

The determination of whether the further permit for the maintenance dredging operation would be a major and significant Federal action would be made by the Corps and would take place independently from any consideration of the initial dredging project permit. It would depend upon an evaluation of such factors as the proximity of the dredging site to spawning areas or shellfish beds, the extent of any trace contamination of the dredged material with biologically accumulative or toxic substances, the size and duration of the maintenance dredging operations, the type of disposal and site of disposal proposed for the dredged material. If a statement were required, the foregoing factors would, of course, be analyzed along with the need for maintaining the dredged channel.

Maintenance dredging carried out by the Corps on "Federal channels" ordinarily involves the type of continuing activity which could require an impact statement where an evaluation of the factors set out in the preceding paragraph indicates that the overall commitment to a maintenance dredging program is a major and significant Federal action. The dredging, however, properly could continue pending preparation of the statement. Whether Corps or non-Corps dredging is involved, if an impact statement is deemed necessary, the statement should discuss such alternatives as varying sites for disposal of the dredged spoil and not engaging in or permitting the maintenance dredging at all.

Your second question deals with new dredging projects undertaken after the effective date of NEPA and asks what aspect of future maintenance needs should be addressed in the original environmental impact statement on the project. In our view the original statement should contain an assessment of the future requirements for maintenance dredging and should consider means of disposing of the spoil associated with such future dredging. If this is done, subsequent Federal action, where it involves direct Corps maintenance of a channel, need not be accompanied by a new environmental impact statement unless the circumstances of the maintenance dredging and dredge spoil disposal are significantly changed. If a significant change is involved and the Federal action is "major", preparation of a new statement would be required.

If a further Corps permit was required for a subsequent major and significant maintenance dredging operation by a non-Corps party, the initial environmental impact statement probably would provide much of the information necessary for the updated statement.

Sincerely,

(Signed) Timothy Atkeson

Timothy Atkeson
General Counsel

Mr. Ralph E. Casey
Chief Counsel
U.S. House of Representatives
Committee on Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

cc: Hon. William D. Ruckelshaus
Brig. Gen. K. B. Cooper, U.S. Army

ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 Peachtree St., N.E., Atlanta, Georgia 30309

January 11, 1973

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 2288
Mobile, Alabama 36628

Attn: R. W. Davis
Chief, Operations Division

Subject: SAMOP-O Dredging Approach and Inner Harbor Channels
Pensacola Harbor, Florida

Dear Sir:

This is in reply to your letter of December 21, 1972 regarding comments on the spoil disposal plan for the subject work.

Insufficient data is given to properly evaluate the effects of the project on water quality.

Since no core boring data is shown, the suitability of the spoil for open water disposal is unknown. This is particularly true of the materials to be removed adjacent to the Pensacola Marine Terminal, the Baylin Wharf area and the Municipal and Frisco Pier areas.

The criteria outlined under Section XI of EPA's "Water Quality Considerations for Construction and Dredging Operations, revised April 1971" should be used in determining the suitability of the spoil for open water disposal. If the spoil is not polluted by these standards and contains primarily sand, no problems with water quality are anticipated because of the location of the disposal areas in relatively deep water.

However, if the spoil is polluted to the extent that it will cause environmental damage to Pensacola Bay, it should be contained behind dikes in an approved upland area for a sufficient length of time so that the effluent therefrom does not violate the water quality standards of Pensacola Bay.

Sincerely yours,

Arthur G. Linton

Arthur G. Linton, Chief
Federal Activities Office

SAMOP-O 16 February 1973

Mr. Arthur G. Linton
Chief, Federal Activities Office
Environmental Protection Agency
Region IV
1421 Peachtree St. N. E.
Atlanta, Georgia 30309

Dear Mr. Linton:

Reference is made to your letter of 11 January 1973 pertaining to our proposed maintenance dredging in Pensacola Harbor, Florida.

I appreciate your comment regarding the need for complete core boring; however, due to the lack of adequate time for this work we have been unable to accomplish necessary sampling prior to the work in question. We do expect to have this accomplished prior to the next dredging in this area.

Maintenance dredging of these channels has been a continuing action over a period of many years. Historically the dredged material has been deposited in open water in the same areas as now proposed. No upland areas are currently available for use for deposition of this material.

It is urgent that maintenance work be accomplished to avoid restricting the movement of traffic into the Port of Pensacola. Therefore, since this material has historically been placed in open water areas we propose to dispose of material from this particular job in the same manner.

By letter of 13 July 1972 the Council on Environmental Quality, in writing to the U. S. House of Representatives Committee on Merchant Marine and Fisheries, stated in pertinent part that "Maintenance dredging carried out by the Corps on "Federal Channels" ordinarily involves the type of continuing activity which would require an impact statement - - -. The dredging, however, properly could continue

SAMOP-O 16 February 1973
Mr. Arthur G. Linton

pending preparation of the statement." Such a statement is currently being prepared by this office for the Pensacola Harbor project. It is expected that this will be filed with the Council on Environmental Quality about 1 June 1973. This will of course be coordinated with all concerned agencies and consider all alternative methods of spoil disposal from channel dredging. Subsequent operations will be conducted in accordance with the approved Environmental Impact Statement.

Your continued cooperation in this matter is appreciated.

Sincerely yours,

HARRY A. GRIFFITH
COL, Corps of Engineers
District Engineer

FLORIDA GAME AND FRESH WATER FISH COMMISSION

COCK, JR., Chairman
Miami

JAMES B. WINDHAM
Jacksonville

WILLIAM M. BLAKE
Tampa

O. L. PEACOCK, JR.
Ft. Pierce

HOWARD ODOM
Marianna

DR. O. E. FRYE, JR., Director
H. E. WALLACE, Assistant Director

FARRIS BRYANT BUILDING
620 South Meridian Street
Tallahassee, Florida 32304

January 26, 1973

Mr. R. W. Davis, Chief
Operations Division
Mobile District, Corps of Engineers
P. O. Box 2288
Mobile, Alabama 36628

Re: Santa Rosa County, Pensacola Harbor
Proposed Dredging and Spoil Disposal

Dear Mr. Davis:

Our field biological inspection team has reviewed the above referenced project and offers the following comments in accordance with the Fish and Wildlife Coordination Act.

The project involves channel and waterfront dredging to facilitate commercial navigation leading to docking facilities in Pensacola Harbor. All spoil sites are located off shore.

Open water spoil sites are damaging to marine communities. Siltation and turbidity resulting from dredging and spoiling operations disrupts benthic communities, covers productive grass flats, increases the availability of toxic substance usually tied up in bottom sediments, and decreases the available oxygen content in the water column. In many instances, marine communities become seriously impaired from such operations. In view of these facts we have continually recommended, to the Army Corps of Engineers, that upland sites be secured for spoil disposal.

In conclusion, we recommend that the Pensacola Harbor project not go forward until alternate upland disposal sites are located.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

O. E. Frye, Jr.
Director

SAMOP-O 16 February 1973

Mr. O. E. Frye, Jr.
Director
Florida Game and Fresh Water Fish Commission
Farris Bryant Building
620 South Meridian Street
Tallahassee, Florida 32304

Dear Mr. Frye:

Reference is made to your letter of 26 January 1973 pertaining to our proposed maintenance dredging in Pensacola Harbor, Florida.

Maintenance dredging of these channels has been a continuing action over a period of many years. Historically the dredged material has been deposited in open water in the same areas as now proposed. No upland areas are currently available for use for deposition of this material.

By letter of 13 July 1972 the Council on Environmental Quality, in writing to the U. S. House of Representatives Committee on Merchant Marine and Fisheries, stated in pertinent part that "Maintenance dredging carried out by the Corps on "Federal Channels" ordinarily involves the type of continuing activity which would require an impact statement - - -. The dredging, however, properly could continue pending preparation of the statement." Such a statement is currently being prepared by this office for the Pensacola Harbor project. It is expected that this will be filed with the Council on Environmental Quality about 1 June 1973. This will of course be coordinated with all concerned agencies and consider all alternative methods of spoil disposal from channel dredging.

In the meantime, however, it is urgent that maintenance work be accomplished to avoid restricting the movement of traffic into the Port of Pensacola. Therefore, since this material has historically been placed

SAMOP-O
Mr. O. E. Frye, Jr.

16 February 1973

in open water areas we propose to dispose of material from this particular job in the same manner. Subsequent operations will be conducted in accordance with the approved Environmental Impact Statement.

Your continued cooperation in this matter is appreciated.

Sincerely yours,

HARRY A. GRIFFITH
COL, Corps of Engineers
District Engineer

CF: FO-MO

FLORIDA GAME AND FRESH WATER FISH COMMISSION

PEACOCK, JR., Chairman
Miami

JAMES B. WINDHAM
Jacksonville

WILLIAM M. BLAKE
Tampa

O. L. PEACOCK, JR.
Ft. Pierce

HOWARD ODOM
Marianna

DR. O. E. FRYE, JR., Director
H. E. WALLACE, Assistant Director

FARRIS BRYANT BUILDING
620 South Meridian Street
Tallahassee, Florida 32304

February 14, 1973

Mr. R. W. Davis, Chief
Operations Division
Department of the Army
Corps of Engineers
P. O. Box 2288
Mobile, Alabama 36628

Re: Proposed dredging, Pensacola Harbor

Dear Mr. Davis:

Our environmental staff has reviewed the proposed maintenance dredging project in Pensacola Bay and we offer the following comments.

The large dredge and spoil project will have a negative effect on the waters of the Bay and the associated ecosystem. Dredging and open water spoiling creates turbidities and siltations which often lead to the devastation of large areas of aquatic habitat. In our opinion the project as proposed will significantly disrupt the existing resources of the Bay.

To reduce the biological impact of the proposed works, a close evaluation of necessary dredging should be accomplished. All open water spoiling should be eliminated as well as any unneeded dredging. Turbidities should be adequately controlled during all dredging operations.

If the above recommendations are accepted, the biological impact of the proposed action could be significantly reduced. If we can be of further service in this matter please feel free to contact us.

Sincerely,

O. E. Frye, Jr.
Director

OEF:RDD:ph

State of Florida

DEPARTMENT OF NATURAL RESOURCES

RANDOLPH HODGES
Executive Director

LARSON BUILDING / TALLAHASSEE 32304 / TELEPHONE 224-7141

REUBIN O'D. ASKEW
Governor
RICHARD (DICK) STONE
Secretary of State
ROBERT L. SHEVIN
Attorney General
FRED O. DICKINSON, JR.
Comptroller
THOMAS D. O'MALLEY
Treasurer
DOYLE CONNER
Commissioner of Agriculture
FLOYD T. CHRISTIAN
Commissioner of Education

February 22, 1973

Mobile District Engineer
U. S. Army, Corps of Engineers
Post Office Box 2288
Mobile, Alabama 36628

Dear Sir:

This is in response to your letter, reference SAMOP-O, of December 21, 1972, concerning the proposed plan of spoil disposal for Pensacola Harbor, Florida.

Interested offices of this Department have reviewed the proposed plan, and there were no adverse comments except for those submitted by the Survey and Management office, copy of which is enclosed.

Sincerely,

Randolph Hodges

Randolph Hodges
Executive Director

RH: jkw

Enclosure

State of Florida
DEPARTMENT OF NATURAL RESOURCES

NTEROFFICE MEMORANDUM

February 13, 1973

TO : Mr. H. J. Kelly
Administrative Assistant

FROM : Thomas Savage, Chief
Survey and Management

SUBJECT: Maintenance Dredging, Pensacola Harbor and Channels, Corps of Engineers, Pensacola Bay, Escambia County

Our marine biologist, Mickey Bryant, has inspected the subject area and reports as follows:

"The Corps of Engineers proposes to redredge the two 300-foot-wide approach channels and the inner harbor channel and turning basin area of Pensacola Harbor. Although the number of cubic yards of spoil material to be dredged is not indicated on the map, the dredge project covers a total bay bottom area of approximately 163.8 acres. Over 71.3 acres are included in the inner channel and turning basin area. The remaining 92.5 acres of submerged land in the dredge area are contained in the two approach channels. Spoil disposal sites are located in the open bay 2,000 feet away and parallel to the navigation and approach channels.

"Bay bottoms adjacent to the dredge project are sandy, silty, and unvegetated, varying from 17 to 33 feet deep. Redredging silty sediments from existing channel bottoms should not have significant adverse effects on marine biological resources provided silt restraining devices are used to control turbidity and siltation.

"The Corps proposes to use open water spoil sites for this project. In open water spoil operations, it is impossible to contain the fine materials. Silty spoil sediments are easily resuspended by storm currents and wave action and can be dispersed throughout the bay, disturbing productive marine areas in the bay.

"Shallow areas in Pensacola Bay and Santa Rosa Sound are sandy and vegetated by sea grasses and provide highly productive habitat for marine animals. Dragnet samples taken during field survey investigations in shallow areas yielded oysters, mussels, xanthid crabs, mysid shrimp, small clams, juvenile blue crabs, juvenile pink shrimp, hermit crabs, gobies, and tonguefish. Spotted seatrout, menhaden, black mullet, pinfish, mojarra, silversides, killifish, puffer, needlefish, lizardfish, and flounder were caught in minnow seine samples. Although the sandy, unvegetated areas of the bay did not yield the abundance of marine animals associated with areas vegetated by sea grasses, the shallow, sandy, submerged lands in the bay are biologically productive and should be protected from siltation caused by open water spoiling operations. Dredge spoil from this project should be placed on diked upland property or it should be carried out of the bay to an offshore disposal site in the Gulf of Mexico.

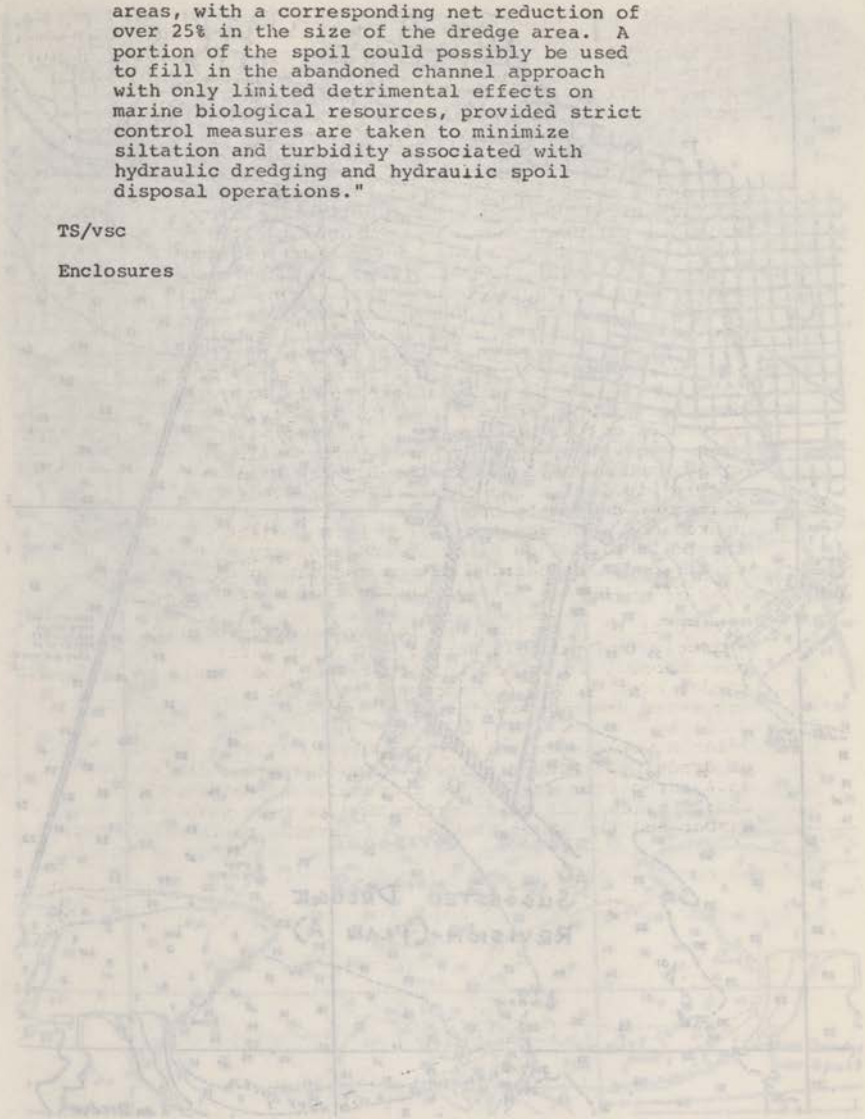
"There is no apparent need to have two approach channels to Pensacola Harbor. By abandoning one channel, it is possible to reduce the total dredge area. (See the attached maps for suggested dredge revisions.)

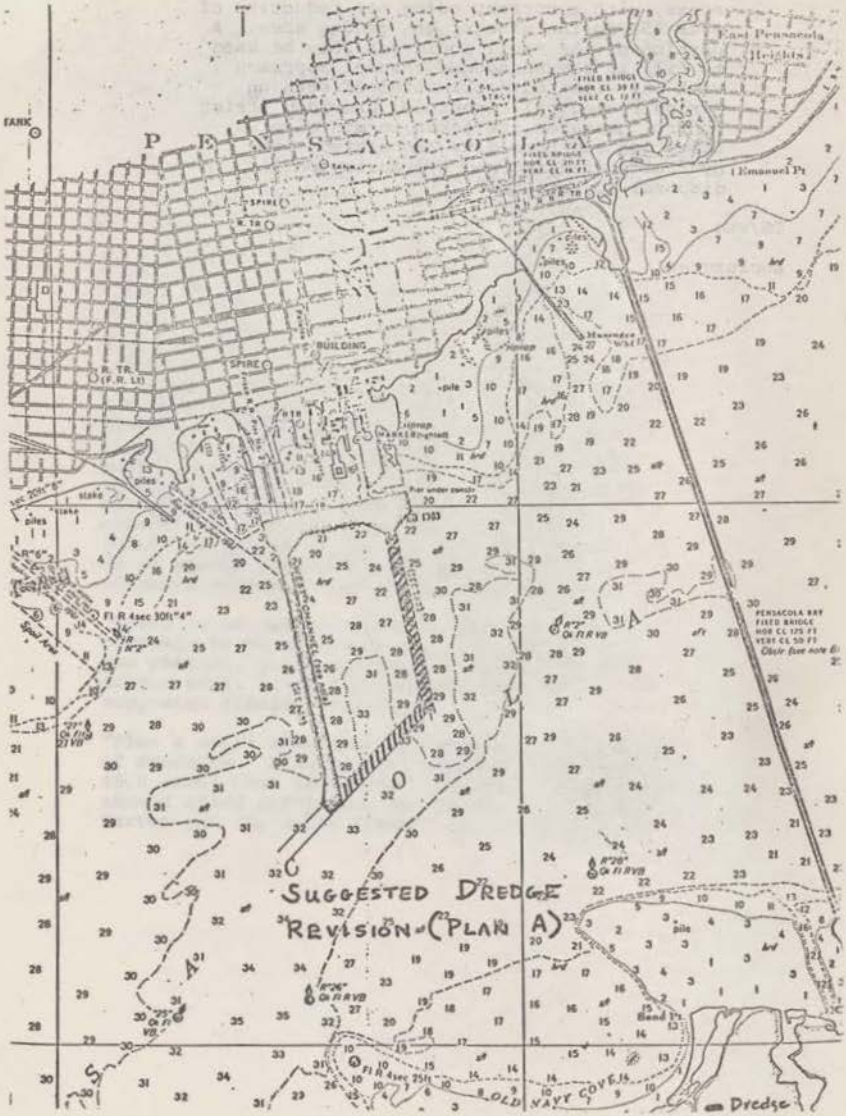
"Plan A would eliminate approximately 47.8 acres of dredging. Plan B would eliminate approximately 45.6 acres from the dredge proposal. Either plan should allow sufficient navigation to Pensacola Harbor and the inner channel and turning basin

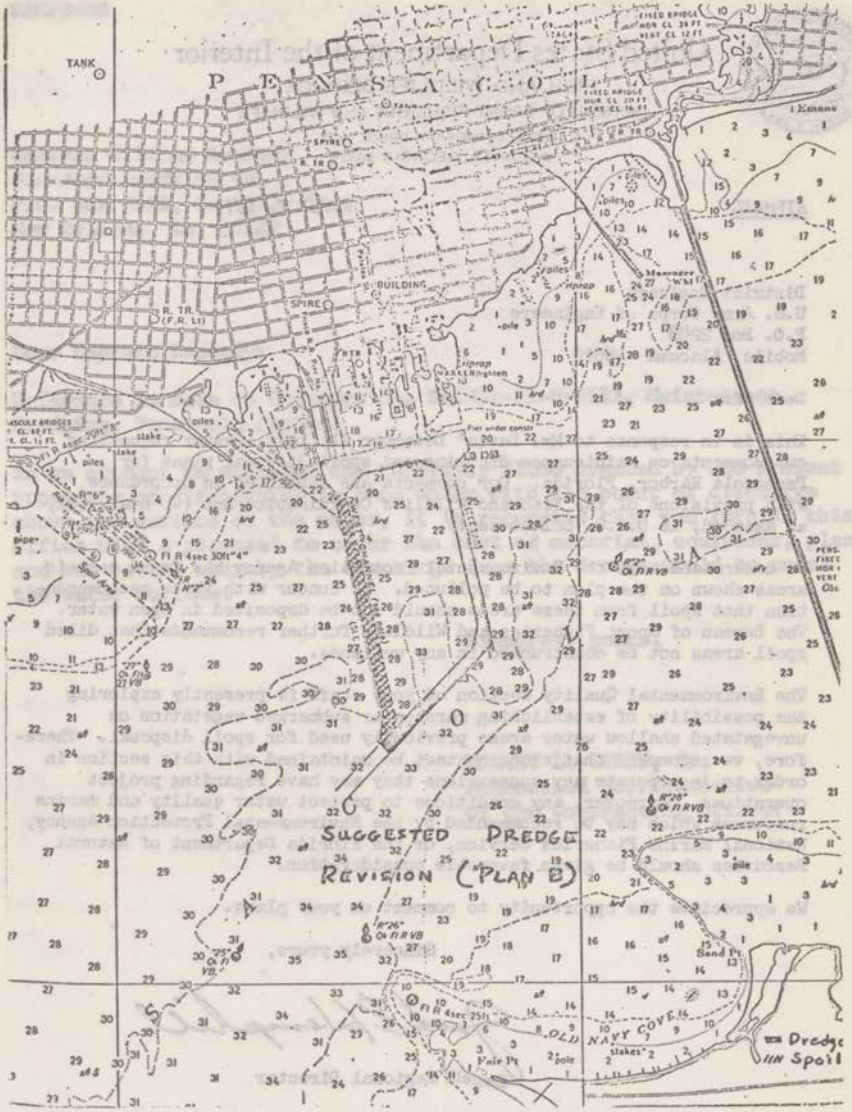
areas, with a corresponding net reduction of over 25% in the size of the dredge area. A portion of the spoil could possibly be used to fill in the abandoned channel approach with only limited detrimental effects on marine biological resources, provided strict control measures are taken to minimize siltation and turbidity associated with hydraulic dredging and hydrauiic spoil disposal operations."

TS/vsc

Enclosures




PENSACOLA
East Pensacola Heights
Emanuel Pt
SUGGESTED DREDGE REVISION (PLAN A)
Dredge
OLD NAVY COVE


TANK
PENSACOLA
SPIRE
BUILDING
SUGGESTED DREDGE
REVISION ("PLAN B")
NAVY COVE
Dredge
Spoil

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

AIRMAIL

March 7, 1973

District Engineer
U.S. Army Corps of Engineers
P.O. Box 2288
Mobile, Alabama 36628

Dear Sir:

This is in response to Mr. Davis' December 21, 1972, letter requesting our comments on maintenance dredging and spoil disposal plans for Pensacola Harbor, Florida. Our comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

We understand that the Environmental Protection Agency has found certain areas shown on the plan to be polluted. We concur with their recommendation that spoil from these areas should not be deposited in open water. The Bureau of Sport Fisheries and Wildlife further recommends that diked spoil areas not be constructed in any wetlands.

The Environmental Quality Section of your staff is presently exploring the possibility of establishing marshes or submerged vegetation on unvegetated shallow water areas previously used for spoil disposal. Therefore, we recommend that close contact be maintained with this section in order to incorporate any suggestions they may have regarding project operations. Moreover, any conditions to protect water quality and marine resources which may be recommended by the Environmental Protection Agency, National Marine Fisheries Service, or the Florida Department of Natural Resources should be given favorable consideration.

We appreciate the opportunity to comment on your plans.

Sincerely yours,

Jack E. Hemphill

Deputy Regional Director

SAMFO-MO

Captain William Kennedy
Standard Dredging Co.
P.O. Box 8092, Gentilly Sta.
New Orleans, La. 70122

Dear Captain Kennedy:

Reference is made to Contract No. DACW01-73-C-0113, Maintenance Dredging, Pensacola Harbor.

In an attempt to minimize the turbidity flume created by the present procedure of discharging in open water with the point of discharge above the surface of the water, it is requested that you furnish this office with a proposal to cover the cost of material, equipment, plant and man power, whereby the discharge from the dredge would be under the water surface.

Sincerely yours,

HARVEY L. COREY, Jr.
Authorized Representative
of the Contracting Officer

STANDARD DREDGING CORPORATION
SEABROOK YARD
6201 FRANCE ROAD
P. O. BOX 8092 - GENTILLY STATION
NEW ORLEANS, LA. 70182

EW YORK, N.Y.
ANGELES, CALIF.

AREA CODE 504
TELEPHONE 282-6451
CABLE ADDRESS UNDRECO

DREDGING, RIVER AND HARBOR IMPROVEMENTS
AND LAND RECLAMATION

March 16, 1973

Mr. Harvey L. Corey, Jr.
DEPARTMENT OF THE ARMY
Mobile District, Corps of Engineers
P. O. Box 2288
Mobile, Alabama 36628

RE: CONTRACT DACW01-73-C-0113

Dear Sir:

We have your letter dated March 14, 1973, regarding the preparation and installation on our Dredge "ORLEANS" our derrick barge specially fitted with underwater discharge.

As you requested, we attach an estimate of costs to prepare, tow and put into operation the derrick barge on the jobsite.

If this meets with your approval, please notify us immediately and we will prepare the barge for departure.

Yours very truly,

STANDARD DREDGING CORPORATION

W. G. Kennedy, Vice President

WGK:mlp

encl.

DERRICK BARGE SEABROOK.

SPECIALLY FITTED WITH UNDERWATER DISCHARGE.

APPROX 80' 27" I.D. PIPE & 3 BALL JOINTS REQUIRED.

FABRICATE NIPPLE WITH BALL & BELL	240.00
FABRICATE TWO 90° ELBOWS.	410.00
FABRICATE TWO 45° ELBOWS.	310.00
WELD TWO BALL JOINTS ON PIPE	130.00
WORK ON BARGE	620.00
REBUILD A-FRAME.	326.00
REBUILD BRACE FRAME	158.00
REPLACE BACKSTAY CABLES	380.00
INSTALL SIDE SWAY CABLES.	180.00
INSTALL SIDE SWAY FRAMES	520.00
DRUM CABLES 800 FT	120.00
WORK ON ENGINE	480.00
WORK ON HOIST	250.00
PAINTING	152.40
ENGINEERING	150.00
OVERHEAD.	300.00
FRINGE BENIFITS	632.60
TOWING TO AND FROM JOB SITE	2370.00
TOTAL.	$8,500.00

1 TELEGRAM 23 MAR 73

DISTENGR MOBILE ALABAMA //SAMOP-O//

STANDARD DREDGING COMPANY
P. O. BOX 8092, GENTILLY STATION
NEW ORLEANS, LOUISIANA 70182

RE CONTRACT DACW01-73-C-0113, MAINTENANCE DREDGING IN PENSACOLA HARBOR, FLORIDA.

YOUR PROPOSAL DATED 16 MARCH 1973 IN THE AMOUNT OF $8,500 CONCERNING THE PROPOSED CHANGES IN MAINTENANCE DREDGING OPERATIONS IS ACCEPTED. YOU ARE HEREBY DIRECTED TO PROCEED WITH THE CHANGES IN THE METHOD OF DISCHARGING SPOIL AS DIRECTED BY THE AREA ENGINEER. ACKNOWLEDGMENT OF THIS TELEGRAM IS REQUESTED. APPROPRIATE WRITTEN DIRECTIVE AND MODIFICATION WILL FOLLOW.

Faile/Dees
Pruett
Wallace
Meredith
Davis

Orig. CO-O
cy fur: FO-MO
OP-O file
R/F

ROY M. FAILE, CIVIL ENGR. OP-O X463

HARRY A. GRIFFITH, COL, CofE, DISTRICT ENGR.
CONTRACTING OFFICER

$/MEA170(1712)(2-213120E082)PD 03/23/73 1710

ICS IPMMTZZ CSP

ZCZC 4045265727 TDMT ATLANTA GA 54 03-23 0510P EST

PMS DISTRICT ENGINEER

US ARMY CORP OF ENGINEERS 2301 AIRPORT BLVD

MOBILE AL

WE HAVE BEEN ADVISED BY FLORIDA DEPARTMENT OF POLLUTION CONTROL THAT THE CURRENT MAINTENANCE DREDGING IN PENSACOLA BAY IS VIOLATING THE WATER CUALITY STANDARD FOR TURBIDITY ESTABLISHED BY THE STATE.

WE RECOMMEND THAT THIS DREDGING BE STOPPED AND AN INVESTIGATION MADE WITH STATE PERSONNEL TO ESTABLISH ACCEPTABLE PROCEDURES FOR CONTINUED DREDGING.

PAUL J TRAINA DIRECTOR ENFORCEMENT DIVN REGION 4 ATLANTA GA

1 TELEGRAM 26 MAR 73

DISTENGR MOBILE ALA //SAMOP-O//

MR. PAUL J. TRAINA, DIRECTOR
ENFORCEMENT DIVISION
ENVIRONMENTAL PROTECTION AGENCY
REGION IV
1421 PEACHTREE ST. N. E.
ATLANTA, GA 30309

REFERENCE YOUR TELEGRAM DATED 23 MARCH 1973 RE DREDGING OPERATIONS IN PENSACOLA BAY, FLORIDA.

WE ARE AWARE OF TURBIDITY PROBLEM IN PENSACOLA BAY AND HAVE BEEN IN TOUCH WITH REPRESENTATIVES OF STATE OF FLORIDA REGARDING MATTER.

ACTION HAS BEEN INITIATED TO ENTER INTO CHANGE ORDER WITH CONTRACTOR TO MODIFY DISCHARGE AND PROVIDE FOR DISCHARGE OF MATERIAL UNDER WATER.

THIS IS IN ACCORDANCE WITH RECOMMENDATION OF STATE REPRESENTATIVE.

CHANGE IN SPOIL PROCEDURE WILL BE EFFECTED THIS WEEK AND SHOULD CORRECT PROBLEM.

Wallace/Dees
Davis

Orig, Contract File Supply Div,
DACW01-73-C-0113
cy for OP-O
FO-MO R/F

DWARD B. WALLACE, CHIEF, OP-O X232

R. W. DAVIS, CHIEF, OP X539

US CORP MOBI

9 APR 1973

AAA005

P 091748Z APR 73

FM JACK E MEMPHILL BSFW ATLANTA GA/ISFW/

TO DIST ENGINEER US ARMY CORPS OF ENGINEERS MOBILE AL

BT

UNCLAS

REFERENCE IS MADE TO OUR MARCH 7\ 1973, QOUEN LETTER TO YOU CONCERNING THE PROPOSED PENSACOLA HARBOR\ FLORIDA\ MAINTENANCE DREDGING PROJECT. THE FOLLOWING ADDITIONAL COMMENTS ARE SUBMITTED IN ACCORDANCE WITH PROVISIONS OF THE FISH AND WILDLIF COORDINATION ACT \48 STAT. 401, RPQN AS AMENDED\ 16 QY U.S.C. 661 33-'31 YYQ ET SEQ.\. PAR. WE UNDERSTAND THAT PROJECT CONSTRUCTION HAS BEEN INITIATED AND POTENTIALLY POLLUTED SPOIL MATERIALS ARE BEING PLACED DIRECTLY INTO THE BAY CONTRARY TO THE RECOMMENDATIONS OF THIS BUREAU AND THE ENVIRONMENTAL PROTECTION AGENCY. WE DO NOT UNDERSTAND WHY PROJECT PLANS WERE NOT MODIFIED IN ACCORDANCE WITH THE RECOMFENDATIONS PRESENTED IN OUR MARCH 7 LETTER. PARA. THEREFORE\ THE BUREAU OF SPORT FISHERIES AND WILDLIFE RECOMMENDS THAT PROJECT PLANS BE IMMEDIATELY MODIFIED TO INCORPORATE THE RECOMMENDATIONS PRESENTED IN OUR MARCH 7 LETTER TO PROTECT FISH AND WILDLIF RESOURCES OR MAINTENANCE DREDGING OPERATIONS BE STOPPED AND THE MATTER BE REFERRED TO THE CHIEF OF ENGINE\RS OFFICE FOR RESOLUTION. PAR. THIS REPORT HAS BEEN CONCURRED IN AND REPRESENTS THE VIEWS OF MR. JACK W. GEHRINGER\ REGIONAL DIRECTOR\ NATIONAL MARINE FISHERIES SERVICE\ ST. PETERSBURG\ FLORIDA.

BT

PAGE 1 OF 2	DRAFTER OR Rreleaser TIME	PRECEDENCE ACT	PRECEDENCE IN	LMF	CLASS	CIC	FOR MESSAGE CENTER/COMMUNICATIONS CENTER ONLY	DATE - TIME	MONTH	YR
		TT						10 1531 EST	APR	73

BOOK

MESSAGE HANDLING INSTRUCTIONS

FROM: DISTENGR MOBILE ALA //SAMOP-O//

TO: U. S. DEPT OF THE INTERIOR
FISH & WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
ATTN: MR. JACK E. HEMPHILL, DEPUTY REGIONAL DIR.
17 EXECUTIVE PARK DRIVE, N.E.
ATLANTA, GA 30329

REFERENCE IS MADE TO YOUR TELETYPE DATED 9 APRIL 1973 CONCERNING MAINTENANCE DREDGING IN PENSACOLA HARBOR, FLORIDA. FURTHER REFERENCE IS MADE TO OUR LETTER DATED 21 DECEMBER 1972, AND YOUR REPLY DATED 7 MARCH 1973, BOTH CONCERNING COORDINATION OF THE MAINTENANCE DREDGING WORK. THIS OFFICE HAD FORMULATED FINAL PLANS TO ACCOMPLISH THE PROPOSED WORK, AND AWARDED A CONTRACT WITH WORK COMMENCING ON 9 MARCH 1973. EVERY EFFORT WAS MADE TO MEET THE REQUIREMENTS OF ALL INTERESTED FEDERAL AND STATE ENVIRONMENTAL AGENCIES. THE FOLLOWING REPLY WAS SENT TO EPA on 16 FEBRUARY 1973 IN CONSIDERATION OF THIS QUESTION:

"MAINTENANCE DREDGING OF THESE CHANNELS HAS BEEN A CONTINUING ACTION OVER A PERIOD OF MANY YEARS. HISTORICALLY THE DREDGED MATERIAL HAS BEEN DEPOSITED IN OPEN WATER IN THE SAME AREAS AS NOW PROPOSED. NO UPLAND AREAS ARE CURRENTLY AVAILABLE FOR

DISTR:
cy fur: FO-MO
R/F

Maddox/Dees
463
Meredith
Davis

DRAFTER TYPED NAMED, TITLE, OFFICE SYMBOL AND PHONE
JIMMIE M. MADDOX, CIVIL ENGR TECH X463

SPECIAL INSTRUCTIONS

RELEASER

TYPED NAME, TITLE, OFFICE SYMBOL AND PHONE
TERRENCE J. CONNELL, ATC, CofE,

SIGNATURE ACTING DISTRICT ENGINEER

Terrence J. Connell

SECURITY CLASSIFICATION

DD FORM 1 JUL 68 173 REPLACES DD FORM 173, 1 NOV 63 AND DD FORM 173-1, 1 NOV 63, WHICH ARE OBSOLETE.

USE FOR DEPOSITION OF THIS MATERIAL.

IT IS URGENT THAT MAINTENANCE WORK BE ACCOMPLISHED TO AVOID RESTRICTING THE MOVEMENT OF TRAFFIC INTO THE PORT OF PENSACOLA. THEREFORE, SINCE THIS MATERIAL HAS HISTORICALLY BEEN PLACED IN OPEN WATER AREAS WE PROPOSE TO DISPOSE OF MATERIAL FROM THIS PARTICULAR JOB IN THE SAME MANNER.

BY LETTER OF 13 JULY 1972 THE COUNCIL ON ENVIRONMENTAL QUALITY, IN WRITING TO THE U. S. HOUSE OF REPRESENTATIVES COMMITTEE ON MERCHANT MARINE AND FISHERIES, STATED IN PERTINENT PART THAT "MAINTENANCE DREDGING CARRIED OUT BY THE CORPS ON "FEDERAL CHANNELS" ORDINARILY INVOLVES THE TYPE OF CONTINUING ACTIVITY WHICH WOULD REQUIRE AN IMPACT STATEMENT - - -. THE DREDGING, HOWEVER, PROPERLY COULD CONTINUE PENDING PREPARATION OF THE STATEMENT." SUCH A STATEMENT IS CURRENTLY BEING PREPARED BY THIS OFFICE FOR THE PENSACOLA HARBOR PROJECT. IT IS EXPECTED THAT THIS WILL BE FILED WITH THE COUNCIL ON ENVIRONMENTAL QUALITY ABOUT 1 DEC 1973. THIS WILL, OF COURSE, BE COORDINATED WITH ALL CONCERNED AGENCIES AND CONSIDER ALL ALTERNATIVE METHODS OF SPOIL DISPOSAL FROM CHANNEL DREDGING. SUBSEQUENT OPERATIONS WILL BE CONDUCTED IN ACCORDANCE WITH THE APPROVED ENVIRONMENTAL IMPACT STATEMENT."

THE CURRENT DREDGING SHOULD BE COMPLETED ON OR BEFORE 15 APRIL 1973.

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
17 EXECUTIVE PARK DRIVE, N. E.
ATLANTA, GEORGIA 30329

May 16, 1973

District Engineer
U.S. Army Corps of Engineers
P.O. Box 2238
Mobile, Alabama 36628

Dear Sir:

This letter is in response to your telegram of April 10, 1973, concerning maintenance dredging in Pensacola Harbor, Florida. The open water disposal of maintenance dredged materials by the Mobile District, Corps of Engineers in disregard of this Bureau's specific recommendations has in our opinion, circumvented the intent of the Fish and Wildlife Coordination Act. Further, this action carried out by the Corps of Engineers sets a precedent which makes it extremely difficult for the Bureau of Sport Fisheries and Wildlife to review Department of the Army permit applications and provide meaningful recommendations to private permit applicants proposing to conduct similar type operations in the same area.

We do not believe that a continued action of this kind is justifiable on the basis of the Corps having "historically" used this spoiling area. Condoning of such reasoning would lead to the destruction of thousands of acres of our Nation's valuable fish and wildlife habitat. Such cannot be tolerated or afforded, particularly when less damaging alternatives are available, as was the case in this instance. We believe the Mobile District Engineer acted arbitrarily by not referring our recommendations to the Chief of Engineers for resolution.

It is recognized that an environmental impact statement is being prepared on this project. However, with the project already completed, little consolation is realized through any effort to protect or prevent losses to natural resources in the area.

As discussed by telephone with Colonel Connell of your office on April 13 and May 7, 1973, this matter could possibly be alleviated in the future if the Mobile District would advise this Bureau of scheduled maintenance dredging well in advance of commencing such operations. This would help alleviate the coordination problem. To this end, we suggest that a meeting between your office, this office, Environmental Protection Agency, and the National Marine Fisheries Service be held in Atlanta Regional Office during the week of July 16, 1973.

Please advise if this proposed meeting time is acceptable. We look forward to further discussion of these matters.

Sincerely yours,

Jack E. Hemphill

Deputy Regional Director

SAMOP-O

21 May 1973

Mr. Jack E. Hemphill
Deputy Regional Director
U. S. Department of the Interior
Fish and Wildlife Service
Bureau of Sport Fisheries and Wildlife
17 Executive Park Drive, N. E.
Atlanta, Georgia 30329

Dear Mr. Hemphill:

Reference is made to your letter of 16 May 1973 regarding recently completed maintenance dredging of the inner channels of Pensacola Harbor, Florida.

It is not the intention of this office to continue action in placing dredge material in certain areas simply because we have "historically" done so in the past. As you noted in our telegram of 10 April, the Council on Environmental Quality has stated that maintenance dredging properly could continue as in the past pending preparation of Environmental Impact Statement. Such a statement is currently being prepared, and future dredging at this location would be in accordance with the approved statement.

It is believed that there is some misunderstanding regarding the preparation of the impact statement, and your wording that the project has already been completed. The work that was recently accomplished is a routine maintenance activity which recurs on an interval of three to four years. The Environmental Impact Statement now being prepared covers the continued maintenance of the currently authorized project.

I concur in your suggestion that a meeting with personnel from your office, Environmental Protection Agency, and the National Marine Fisheries Service could produce some excellent results.

SAMOP-O 21 May 1973
Mr. Jack E. Hemphill

I propose to attend with possibly two members of my staff, and will invite a representative from our South Atlantic Division Office from Atlanta to attend such a meeting. I will bring with me a listing of projects on which we propose maintenance dredging during Fiscal Year 1974 in order to give you and other agencies concerned the maximum advance notice possible. I suggest that this meeting be held on 18 July 1973 and, as a convenience for our travel, suggest that it start at about 10 a.m. on that date.

Sincerely yours,

TERENCE J. CONNELL
LTC, Corps of Engineers
Deputy District Engineer

Wallace/km/23
Meredith
Smith
Connell

CF: SADKO
FO-MO

DREDGE MATERIAL TEST REPORT

Lab No.	Project Harbors	Field Sample No.	PER CENT BY WEIGHT (DRY BASIS) T.V.S. Formula	Volatile Solids Max. 6.0	Total Organic Carbon **	C.O.D. Max. 5.0	Nitrogen Kjeldahl Max. 0.10 **	Oil and Crease Max 0.15	Lead Max. 0.005 **	Zinc Max. 0.005 **	Mercury Max. 0.0001 **
3D-111	Fly Creek	FC-1 1169	9.89*	10.32*	3.65	8.74*	0.241*	0.50*	0.0027	0.0255*	0.000383*
3D-100	Fly Creek	FC-1 MDO	2.45	1.62	0.35	1.15	0.031	0.09	0.0009	0.0049	0.000019
3D-14	Perdido Pass	PP-1	1.50	0.26	0.26	0.18	0.010	0.14	0.0001	0.0007	0.000038
3D-32	Perdido Pass	PP-2	1.74	0.71	0.41	0.43	0.019	0.19*	0.0001	0.0009	0.000011
3D-108	Pensacola Harbor	PB-1	14.58*	16.43*	4.37	13.53*	0.458*	0.08	0.0051*	0.0124*	0.000286*
3D-83	Pensacola Harbor	PB-2	13.46*	15.50*	3.43	12.39*	0.458*	0.04	0.0052*	0.0120*	0.000292*
3D-75	Bayou Chico	BC-1	1.74	0.84	0.15	0.43	0.021	0.08	0.0011	0.0023	0.000001
3D-41	Bayou Chico	BC-2	15.83*	10.50*	0.78	14.81*	0.225*	0.27*	0.0179*	0.0596*	0.000008
3D-7	Bayou Chico	BC-3	19.33*	13.48*	12.12	18.38*	0.371*	0.91*	0.0024	0.0077*	0.000001
3D-98	Escambia Bay	ER-1	14.30*	16.40*	3.18	13.24*	0.321*	0.20*	0.0048	0.0132*	0.000120*
3D-54	Escambia Bay	ER-2	7.72*	5.86	2.10	6.53*	0.170*	0.16*	0.0036	0.0059*	0.000043
3D-59	Escambia Bay	ER-3	1.35	0.08	0.01	0.03	0.004	0.04	0.0231*	0.0006	0.000015
3D-40	Blackwater Bay	BR-1	11.64*	8.56*	4.87	10.53*	0.207*	0.00	0.0057*	0.0041	0.000003
3D-113	Blackwater Bay	BR-2	17.33*	15.13*	3.89	16.34*	0.379*	0.39*	0.0033	0.0100*	0.000181*
3D-70	East Pass	EP-1	1.41	0.22	0.34	0.09	0.014	0.00	0.0001	0.0006	0.000001
46	LaGrange Bayou	LC-1	15.03*	12.27*	0.27	13.99*	0.231*	0.02	0.0012	0.0083*	0.000405*

Turbidity Sampling in area of navigation dredging by Dredge Orleans in Pensacola Bay March 14, 1973, 10:30 - 12:00.

Sample	Location	Depth	Turbidity
1	10 ft. discharge	1	3,000
2	150 ft. discharge	1	525
3	150 ft. break	1	420
4	150 ft. discharge	10	1,050
Raw 8	150 ft. discharge	25	680
5	150 Ft. cutter	1	19
6	~~Plan~~ - Bay Background	1	5

Sampling by W.T. Young and John Shailer

Tests by W.H. Howard - March 14, 1973

Photographs by W.H. Howard - 17-20, New 1-4

W T Young

FLORIDA DEPARTMENT OF POLLUTION CONTROL
WATER QUALITY REPORT

AGENCY	STATION NO.	DATE TIME	DEPTH IN FEET
	33·2·K15	3/14/72 11:00	1

LOCATION DESCRIPTION: Pensacola Bay

REMARKS: Re. Navigation channel dredging. Water sample 10 ft. Orleans (dredge) discharge. Dispersing

PARAMETER	VALUE	PARAMETER	VALUE
TEMP WATER		PH FIELD 8-9 / 7-14	
DO		CHLORIDE	
BOD		TOC	
TURBIDITY	3,000	COLOR	
PO4 P ORTHO		PO4 P INORG TOT	
PO4 P TOT		NH3 N	
NO2 N		NO3 N	
ORG N		TOTAL SOLIDS	
SUSP SOLIDS	10,536	DIS SOLIDS	
ALKALINITY		ACIDITY	
Volatile solids Sample #1	9148	Settleable solids	120 mls/l.;
		Pesticides EPA	NONE: DDT, DDD, DDE

Sample homogenized 5 minutes

PREPARED BY:

VERIFIED BY: W. H. Howard

ENVIRONMENTAL PROTECTION AGENCY
GULF BREEZE ENVIRONMENTAL RESEARCH LABORATORY
PESTICIDE ANALYSIS REPORT

MAR 30

Chemical analyses supervised by:
Alfred J. Wilson, Jr.
Gulf Breeze Environmental Research
Laboratory, Gulf Breeze, Fla. 325

Agency submitting sample:

Mr. William Young
Department of Pollution Control
1389 Shoreline Drive
Gulf Breeze, Florida 32561

Verified by: Alfred J. Wilson

Date: March 21, 1973

Parts Per Million (µg/g)

Sample Number	Date Collected (d-m-y)	Description	Station Location	Lab No.	DDE	DDD	DDT	Other
	22-3-73	Sediment	Escambia Bay	510	-	-	-	

- = Non-detected.

PART C.—FEDERAL AND STATE AGENCIES AND PUBLIC COMMENTS ON CORPS OF ENGINEERS PROPOSED REGULATIONS OF MAY 10, 1973

[NOTE.—For subcommittee correspondence re: May 10, 1973, proposed regulations, see pp. —.]

NEWS RELEASE

FOR IMMEDIATE RELEASE MAY 10, 1973

Edward A. Greene
202 693-6329

ARMY CORPS OF ENGINEERS ANNOUNCES PROPOSED REVISION OF PERMIT REGULATIONS

Proposed revisions of the Corps of Engineers permit regulations for controlling work performed in the coastal and navigable inland waters of the United States were published today in the Federal Register.

The tentative changes were made to comply with recent legislation and to insure that all public interest and environmental aspects of the proposed work are properly considered before future permits are issued.

The Corps will consider the comments received during the next 30 days and then publish the final regulations.

The permit program, under Section 10 of the River and Harbor Act of 1899 regulates not only construction of structures such as pilings, anchorages and marinas, but also such operations as dredging canals, disposal of dredge material, filling of wetlands and the transportation of dredged material to the ocean for dumping. About 7,000 permits were issued last year.

Beginning now, the Corps permit program applies to virtually every U. S. waterway. Included are waterways used for any type of interstate commerce, whether the waterways support commercial navigation or not, as well as tidal waters, the oceans, and any other waters which may affect interstate commerce.

The principal changes in the permit program reflect new Corps policies and procedures which have evolved since enactment of the National Environmental Policy Act of 1969, as well as the Federal Water Pollution Control Act, the Marine Protection, Research, and Sanctuaries Act, and the Coastal Zone Managment Act, all of which became law in 1972. The new policies are outlined below, according to broad categories:

Wetlands Protection:

Wetlands need to be protected because they are important in flood storage and water supply, and essential for food chain production and as nesting, spawning and rearing sites for waterfowl, fish and other forms of wildlife.

Because of this, the Corps of Engineers will look closely at proposals to alter any portion of this country's wetlands. Although a single alteration of a wetland may constitute a minor change, the cumulative effect of numerous such changes in a given area could result in major impairment of the region's total wetlands resources. Thus, a permit for development of any wetland will be evaluated carefully to determine the cumulative effect that many changes will have on the total wetland area. Each District Engineer will consult with representatives of appropriate Federal and stage agencies to help assess the cumulative effect of these activities before granting or denying permits for work in wetlands. This does not mean that development of any kind will be prohibited in wetlands. The wetlands policy of the Corps considers the over-all balance between development and conservation and careful consideration will be given to possible alternative activities.

Canals:

The Corps permit program covers all residential development canals connected to a navigable waterway. Canals not connected to a navigable waterway generally will not require a permit from the Corps of Engineers. However, if after connection of a private development canal to a navigable waterway, the private canal may then come under the Corps regulatory authority.

Ocean Dumping; Placing Fill and Dredged Material in Waterways:

Permit applications for placing fill or dredged material into navigable waters or the transportation of dredged material for dumping in the oceans will now be reviewed in accordance with guidelines developed by the Administrator of the Environmental Protection Agency and the Secretary of the Army.

Fees:

The Corps of Engineers will charge a processing fee of $10 for a permit application to cover disposal of less than 2,500 cubic yards of material in navigable waters or to transport an equal amount of dredged material for dumping in the oceans. A processing fee of $100 will be charged for an application involving more than 2,500 cubic yards. These fees are designed to cover the administrative costs in processing the permits and will be reviewed periodically.

QUESTIONS MOST FREQUENTLY ASKED ABOUT
THE CORPS OF ENGINEERS PERMIT PROGRAM

1. DOES THE CORPS OF ENGINEERS STILL HAVE A PERMIT PROGRAM, SINCE THE ENVIRONMENTAL PROTECTION AGENCY TOOK OVER THE REFUSE ACT DISCHARGE PERMIT PROGRAM LAST NOVEMBER WITH THE PASSAGE OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972?

Yes. Even though the Environmental Protection Agency is now handling all discharge permit applications filed by industry and individuals since mid-1971, the Corps of Engineers continues to issue permits for structures or work in or affecting navigable waters of the United States and for the discharge of dredged or fill material in navigable waters as well as the transporting of dredged material for ocean dumping.

2. WHAT MAJOR REVISIONS ARE BEING MADE IN REGULATIONS COVERING THE CORPS OF ENGINEERS PERMIT PROGRAM?

The major revisions place more emphasis on (1) the value; (2) the need to obtain Corps permits for dredging private canals and waterways; (3) the extension of Corps authority for the discharge of dredged or fill material to all waters of the U. S.; (4) the need to obtain Corps permits to transport dredged material for disposal in the oceans; and (5) finally, the collection of fees for disposal of dredged or fill material in designated disposal sites.

3. IS THE CORPS OF ENGINEERS WORKING WITH THE ENVIRONMENTAL PROTECTION AGENCY IN EXERCISING THESE NEW PERMIT AUTHORITIES?

Yes. Under the Federal Water Pollution Control Act of 1972, the Environmental Protection Agency and the Secretary of the Army are responsible for establishing guidelines for disposal sites and the discharge of dredged or fill material. The Corps of Engineers, acting for the Secretary of the Army, will utilize these guidelines in permitting the disposal of dredged or fill material in navigable waters. Also, the Environmental Protection Agency can deny or restrict an approved disposal site if it finds the continued use is having an adverse effect on municipal water supplies, shellfish beds, fishing areas, wildlife or recreation areas.

Also, under the Marine Protection Research and Sanctuaries Act of 1972, the Environmental Protection Agency sets the criteria the Corps uses in evaluating applications for permits to transport dredged material for ocean dumping, and can prevent the Corps from issuing a permit under this Act for the same reasons in which it can deny or restrict the use of a disposal site under the Federal Water Pollution Control Act of 1972.

4. ARE ANY FEES CHARGED FOR PERMITS UNDER THESE NEW PERMIT AUTHORITIES?

Yes. Under the Federal Water Pollution Control Act of 1972 and the Marine Protection, Research and Sanctuaries Act of 1972, a fee of $10 will

be charged for a permit to cover the disposal of less than 2,500 cubic yards of fill in navigable waters or to transport dredged material to be disposed of in the ocean. For over 2,500 cubic yards, the fee will be $100.

5. WILL THE CORPS OF ENGINEERS HAVE TO GET A PERMIT FROM THE SECRETARY OF THE ARMY EACH TIME IT CARRIES OUT A CIVIL WORKS PROJECT IN OR ON A WATERWAY?

No formal permit as such will be required; however, the Marine Protection, Research and Sanctuaries Act of 1972 requires the Secretary of the Army to apply the same policies and procedures in evaluating Corps activities as are applied to private activities in or on a waterway. Also, the Corps of Engineers will coordinate with other concerned Federal agencies its own dredging activities as well as related non-Federal dredging.

6. WILL THE CORPS OF ENGINEERS REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT FOR EVERY PERMIT APPLICATION?

No, not every project or activity; only those that will have a significant impact on the human environment.

7. IN CONSIDERING A NUMBER OF PERMIT APPLICATIONS FROM SEVERAL DIFFERENT DEVELOPERS IN THE SAME COASTAL AREA, WILL THE CORPS OF ENGINEERS TREAT EACH APPLICATION AS A SEPARATE CASE, OR WILL THE CUMULATIVE EFFECT OF ALL THE APPLICATIONS BE TAKEN INTO CONSIDERATION BEFORE THE PERMITS ARE ISSUED OR DENIED?

The Corps of Engineers will consider each case separately but will attempt to evaluate the cumulative effect of all the applications before issuing or denying the permits.

8. WILL THE CORPS OF ENGINEERS EXERCISE ITS PERMIT AUTHORITY OVER CANALS WITHIN RESIDENTIAL DEVELOPMENTS?

Maybe. If the canals are connected to a navigable waterway, they may come under the Corps regulatory authority. If the canals are not connected to a navigable waterway, then generally the Corps of Engineers would not require a permit by the developer.

9. CAN A DEVELOPER CONSIDER HIS CANAL TO BE A PRIVATE CANAL AND CLOSE IT TO THE PUBLIC BY A GATE OR SOME OTHER MEANS?

This will depend in each case on a factual review and legal determination as to whether the canal in question comes under navigable waters of the United States.

10. WHAT ARE NAVIGABLE WATERS OF THE UNITED STATES?

These are the waters which have been in the past, or are at present, or may with reasonable improvement be susceptible for use in interstate commerce. Waters of the United States also include all waters which are subject to the ebb and flow of the tide.

11. DOES AN APPLICATION FOR A CORPS PERMIT HAVE TO GET WATER QUALITY CERTIFICATION FROM THE ENVIRONMENTAL PROTECTION AGENCY OR THE APPROPRIATE STATE WATER POLLUTION CONTROL AGENCY BEFORE THE CORPS OF ENGINEERS WILL CONSIDER THE APPLICATION?

Yes. Certification must pertain to both the construction and operation of the proposed activity.

12. DOES AN ENVIRONMENTAL IMPACT STATEMENT FOR A PROPOSED ACTIVITY IN A NAVIGABLE WATERWAY - SUCH AS CONSTRUCTION OF A DOCK, OR A POWER PLANT OUTFALL - HAVE TO CONSIDER MORE THAN JUST THE IMPACT OF THE CONSTRUCTION ACTIVITY ITSELF?

Every District Engineer will have to look at each proposed activity to determine the need for an environmental impact statement and the extent of its coverage. Each District Engineer will be governed by the facts in each case.

13. DOES THE CORPS OF ENGINEERS WETLANDS POLICY CONFORM TO THE COASTAL ZONE MANAGEMENT ACT OF 1972?

Yes. The Coastal Zone Management Act of 1972 establishes a grant program under the Secretary of Commerce to encourage the states to develop coastal zone management programs to control activities in their coastal zones in recognition of the limited nature of coastal resources. The Corps of Engineers wetlands policy is consistent with this coastal area management concept, and all permits issued by the Corps must comply with approved coastal zone management plans.

LEAGUE OF WOMEN VOTERS OF THE BAY AREA

June 7, 1973

Office of the Chief of Engineers
Army Corp of Engineers
Forrestal Building
Washington, D.C. 20314

Dear Sir:

The League of Women Voters of the Bay Area, which lists among its objectives the preservation of the ecology of the San Francisco Bay Area waters for the good of the public, supports those proposed new U.S. Army Corp of Engineers regulations requiring that no permit will be granted to build on fill in the Corps area of jurisdiction (historic margins of the San Francisco Bay marshes) unless its issuance is found to be in the public interest.

We are aware of the effects of fill of mudflats, marshes, etc. on the fish and wildlife in the Bay, on the maintenance of proper flushing action in the Bay waters, on land use development, and public access and enjoyment. We support regulations which would place severe restrictions over building on what is left of the San Francisco Bay.

Sincerely yours,

Holly O'Konski

Holly O'Konski, President
League of Women Voters of the Bay Area

Arliss L. Ungar

Arliss L. Ungar, Water Chairman
517 Silverado Drive
Lafayette, California 94549

... REPRESENTING REGIONALLY THE LOCAL LEAGUE MEMBERSHIP IN THE BAY AREA

cc: Col. Lammie, San Francisco

Natural Resources Defense Council, Inc.

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June 11, 1973

General James L. Kelly
Acting Director of Civil Works
Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Re: Comment on Corps of Engineers Proposed Policy Practice and Procedure for Permits for Activities in Navigable Waters or Ocean Waters, 38 Fed. Reg. 12217.

Dear General Kelly:

We would like to call your attention to what we consider to be a major problem in your proposed policy guidelines for Corps of Engineers permits published in the Federal Register on May 10, 1973. Proposed section 209.120(b)(4) states, in part:

> While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency, under sections 402 and 405 of the Federal Water Pollution Control Act (Public Law 92-500, 86 Stat. 816).

We disagree strongly with this statement.

Section 402(a) of the Federal Water Pollution Control Act authorizes the Administrator of the Environmental Protection Agency to issue permits for "discharges" into navigable waters. For purposes of the Act, a "discharge" is defined to include "a discharge of a pollutant, and a discharge of pollutants." Section 502(16). And a "discharge of a pollutant" and a "discharge of pollutants" are defined to mean "any addition of any pollutant to navigable waters from any point source . . . " Section 502(12). (Emphasis supplied.) Thus, the EPA permit program authorized by Section 402 of the Federal Water Pollution Control Act is a permit program for point source discharges, and the authority of the Secretary of the Army to issue permits under the Refuse Act has been superseded only with regard to such point source discharges.[1] Where the Refuse Act applied to non-point source discharges, and as you know there have been many instances where the Refuse Act has been so applied,[2] the responsibility for enforcing the Act and for issuing permits thereunder remains with the Secretary of the Army.

We believe that from a public policy point of view it is imperative that the Secretary of the Army continue to apply the Refuse Act to that limited range of non-point sources covered by the Refuse Act. Our natural resources need all the protection we can give them. Moreover, it is impossible to believe that Congress intended to proscribe absolutely all operations which discharge refuse, and are therefore covered by the Refuse Act, but which are not eligible for permits under section 402 of the Water Pollution Control Act because the source is classified non-point. Yet that is the effect of your proposed position.

1/ Section 402(a)(5) provides that "No permit for a discharge into the navigable waters shall be issued under [the Refuse Act] after the date of enactment of [the Water Control Act]." (Emphasis supplied.) However, since "discharge" is defined by the Act to mean a point source discharge, Section 402(a)(5) does not affect the authority of the Secretary of the Army to issue permits for non-point source discharges, pursuant to the Refuse Act.

2/ A typical situation involves the application of the Refuse Act to a dredging, clearing or filling operation on a tributary of a navigable waterway which causes pollutants and other refuse to flow downstream into navigable waters.

Since we believe the position the Corps has proposed is contrary to law and to the public interest, we strongly urge that the regulations under consideration (33 C.F.R. Part 209) be made fully applicable to all discharges subject to the Refuse Act which are not covered by the permit program created by sections 402 and 405 of the Federal Water Pollution Control Act. Only minor changes in the language of section 209.120(b)(4) will be necessary to achieve this result.

We would appreciate hearing from you regarding this matter at your earliest convenience.

Sincerely,

J. G. Speth

JGS/gmm

ENVIRONMENTAL
DEFENSE
FUND

162 OLD TOWN ROAD, EAST SETAUKET, N.Y. 11733/516 751-5121

June 11, 1973

DAEN-CWO-N

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: James L. Kelly, Brigadier General, USA
Acting Director of Civil Works

RE: Comments on Proposed Corps of Engineers
Regulations for Permits in Navigable Waters

Dear General Kelly:

The Environmental Defense Fund ("EDF"), a privately supported non-profit law firm, herewith submits its comments on the Corps of Engineers proposed regulations governing issuance of permits for activities in navigable and ocean waters. 38 Fed. Reg. 12717 (May 10, 1973) proposed 33 CFR §209. 120. EDF is involved in a program to support land use planning that recognizes the ecological value and fragility of our nation's wetlands. We are, therefore, concerned that the Corps of Engineers establish a strong program for regulating permits which is coordinated with other Federal and State agencies and which considers the effects on valuable wetlands. The proposed guidelines represent the beginnings of a well-coordinated program. We hope that these attached comments will be considered in promulgation of the final regulations.

1. Definition of Navigable Waters

The definition of "navigable waters" in the proposed guidelines is too restrictive since areas above the mean high-tide line are totally excluded despite their obvious ecological effect on the quality and quantity of the wetland's environment.

The proposed guidelines adopt the definition of navigable waters previously adopted by the Corps of Engineers §209.170(d)(i)

> Navigable waters of the US are those waters which are presently, or have been, in the past, or may be in the future, susceptible

> for use for purposes of interstate commerce. A determination of navagability, once made, applies laterally over the entire surface of the water body and is not extinguished by later actions or events which impede or destroy navigable capacity. 33CFR §209.260(c)

Within that definition, the jurisdictional limit for rivers and lakes "includes all the land and waters below the original high tide mark" (33 CFR §209.260(j) and for oceanic and tidal waters jurisdiction is limited to "the line on the shore reached by the plane of the mean (average) high water. However, on the Pacific coasts, the line reached by the mean of the higher high waters is used." 33 CFR §209.260(k)

This definition is too narrow, and it greatly restricts the proper scope of many protective programs. This definition apparently excludes the marshy wetland areas above the mean high tide line from the protection of §10 and §13 of the River and Harbor Act, approved March 3, 1899 (30 Stat. 1151, 33 U.S.C. §401)

Another problem with the definition of navigable waters is caused by the use of a different definition under the Federal Water Pollution Control Act (Public Law 92-500, 86 Stat. .816) where the term means "the waters of the United States including the "territorial seas." (§d (3) of proposed regs) With the different definition under this related legislation, it is difficult to determine when each definition applies.

Even more important, the proposed regulations appear to assume at numerous points that the Army Corps has jurisdiction over dredge and fill and other structural activities only in navigable waters. However, §§ 10 and 13 of the Rivers and Harbors Act make it clear that the Army Corps has jurisdiction over such activities in non-navigable water ways where such activity has a navigational or ecological impact on navigable water ways. We refer, for instance, to §(B)(2) on page 12217, (E)(1) on page 12219, (G)(3) on page 12220, and (Q)(3) on page 12229. The Case Law supports this broadened definition. See NRDC v. Grant, 5 ERC 1001, U.S. v. Lewis, 5 ERC 1198 (S.D. Ga., March 12, 1973) No. 2895 (per Lawrence, J.) and U.S. v. Baker, 2 ERC 1849 (July 29, 1971)(Lasker, J.) (70-2773). In these various cases the dredge and/or fill activity was not taking place in navigable water ways per se. Instead, the activity was taking place upland of navigable waters. The Baker case is important because the Hon. Morris Lasker found that a filling project in a tidal marsh several miles off the Hudson River had an "ecological" impact affecting the navigable capability of the Hudson River for purposes of §10 of the Rivers and Harbors Act. A great deal of housing and commercial and recreational development is taking place today in non-navigable streams, brooks, fresh and salt water wetlands, marshes, swamps and other non-navigable water ways which ultimately are connected with and/or

into navigable water ways. It is apparent today that such construction activity in these kinds of non-navigable waters have a measurable ecological or navigational impact on navigable waters. Whenever this is the case, the regulations should make clear that the Corps of Engineers has jurisdiction and that an application for a permit must be filed.

2. Laws Requiring Authorization of Structures or Other Work With Permits

This section of the proposed regulations (§209.120(b)) is a good effort at coordinating the various laws, administered by both the Corps and other agencies, which require authorizing permits. Although this section is almost complete, there is no specific requirement for §9, §10 and §13 permits (of the Rivers and Harbors Act) for watershed projects of the Soil Conservation Service under P.L. 556. See our comments, supra, on dredge and fill activity in non-navigable water ways. The case of NRDC v. Grant, 5 ERC 1001, (D.C. ENC, Feb. 5, 1973) held specifically that the SCS must obtain a §13 permit for any stream channelization project involving dumping sediment where the silt material may find its way into a navigable water course. Thus, this new section should be expanded to include Soil Conservation Service projects under such circumstances. As far as we can determine, despite (B)(4) of the proposed regulations, the Army Corps would still have jurisdiction over this kind of dredge, fill and siltation project sponsored by the Soil Conservation Service pursuant to §13 of the Rivers and Harbors Act. Obviously, here we are not talking about industrial pollutants. Instead, we are talking primarily of silt generated by SCS channelization projects where the silt may affect the navigable capacity of a navigable water way. In any case, if the Army Corps declines to accept jurisdiction of SCS projects pursuant to §13, it should assume such jurisdiction pursuant to §10.

The section should also be expanded to require that HUD comply with §10 permit requirements for large developments on wetlands, as required by the Interstate Land Sales Full Disclosure Act. Both of these agencies are necessary for a coordinated program to protect wetlands.

Similarly, §(e)(3) of the proposed guidelines discusses "permit activities by other federal agencies." This section appears to be a strong attempt to assure that other agencies comply with permit requirements when working on wetlands areas. Yet this section could be even stronger if the other agencies and the type of work were mentioned specifically.

3. Definition of Wetlands

The proposed regulations define wetlands considered to perform functions important to the public interest. (§(g)(3)(iii))

First, we are of the opinion that the adjective "prime" in (g)(3)(f) describing natural recharge areas should be deleted because of the cumulative impact of development of numerous "non-prime" wetland areas. Second, included along with wetlands which serve important natural biologic functions and those which serve as study and refuge areas are wetland contiguous to such areas whose destruction or adulteration could affect the environmental characteristics of these areas. Your definition of "wetlands" appears to recognize the fact that destruction of areas contiguous to wetlands can have adverse effects on the wetlands. Thus EDF would like to see these regulations cover developments and other projects on all lands contiguous to and upland of wetlands, in any case where the wetlands could be affected through an increase in sedimentation from upland erosion as well as from other environmental consequences of new projects. The burden should be on the applicant to demonstrate that an upland development has no impact on the wetlands. See our discussion of drainage and fill activities in non-navigable water ways, supra.

4. General Policies for Evaluating Permit Applications

In a report entitled "Increasing Protection for our Waters, Wetlands and Shorelines, The Corps of Engineers," H.R. No. 92-1323 (Aug. 10, 1972) the Committee on Government Operations recommended that "The Corps of Engineers should promptly revise its regulations, as previously recommended by this committee to require that applicants for permits under §10 of the 1899 Rivers and Harbors Act affirmatively show that the proposed work is in the public interest." (p. 9) It appears that this change has been made in the new proposed guidelines in §f.(1)

> The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed structure or work and its intended use on the public interests. Evaluation of the probable impact which the proposed structure or work may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case...No permit will be granted unless its issuance is fouhd to be in the public interest.

In §(g)(3)(iv) discussing "Effect on Wetlands" from issuance of permits, the local district engineer is directed that, unless the public interest requires otherwise, no permit shall be granted unless the benefits of the proposed alteration outweigh any potential damage to the wetlands. This section is good in that it puts the burden on a permit applicant to show that a project which is harmful to the wetlands could still be necessary for the public interest.

That same House Report No. 92-1323 it was suggested that Corps could serve the public better by discussing alternatives to the proposed permit activity, particularly dry land alternatives. (p. 9) Although the new regulations require the applicant to provide data on alternative sites (§(g)(3)(iv)(b), there is no response to the Committee's specific suggestion that the public be informed of alternatives via the public notice. EDF praises the new regulations which provide for thorough and early public notification of a permit application (§(i)(1)(ii)), yet we urge adoption of the Committee's recommendation regarding notification of alternatives.

5. Consideration of the Cumulative Effects of Projects

The Corps of Engineers has been criticized for failing to evaluate the cumulative effects of channelization and other water programs. (See Statement of Hon. Nathaniel J. Reed, Assistant Secretary of the Interior for Fish and Wildlife and Parks, before the Subcommittee on Conservation and Natural Resources of the House Committee on Government Operation, March 20, 1973, p. 8). The new regulations are useful in requiring consideration of "probable impact of each proposal in relation to the cumulative effect created by other structures or work in the general area." (§(f)(2)(iv)

The new regulations also recognize that the cumulative impact of various projects within an ecosystem may cross agency jurisdictional boundaries. Thus, the new regulations require that in considering the effect on wetlands the application be evaluated as part of a "complete interrelated area" and when necessary, with representatives of the Department of Interior, the National Oceanic and Atmospheric Administration, the E.P.A. and State agencies (§(g)(3)(iii)). Although EDF applauds a coordinated effort to evaluate the cumulative impact of one more project within an ecosystem, we would urge that the regulations be amended to include consultation with a representative of the Soil Conservation Service since their watershed projects have been shown to have a significant effect on the nation's wetlands.

EDF also welcomes the recognition that a wide variety of factors be considered in evaluating an application including water quality (§(g)(5)) and historical, scenic and recreational values. (§(g)(6)). We are also pleased to note that fish and wildlife are included within factors of consideration. (§(g)(4)); we have often urged that the Corps of Engineers cooperate fully with the U.S. Fish and Wildlife Service in accordance with the Fish and Wildlife Coordination Act, (16 USC §661 et seq.)

6. Delegation of Authority To District Engineers

In the past problems have arisen from the delegation of permit-

authority to district engineers. This led to inconsistent decision-making processes throughout the country. Section (f) appears to make the decision-making process more uniform by requiring each district engineer to follow the same "general policies for evaluating permit applications." Section (g) also goes toward assuring more uniform results by specifying "policies on particular factors of consideration."

Unfortunately the decision on whether to issue a NEPA environmental impact statement is still left up to the individual district engineer (§(i)(1)(iv)). EDF feels that this decision is too important to be delegated to the local engineer. The difficulty with leaving such a crucial decision to the district engineer is mitigated somewhat by the requirement that he publish a notice of his decision on whether or not to issue an environmental impact statement. This notice must include a statement on the facts and reasons behind his decision. Similarly, EDF feels that the decision on whether or not to hold a public hearing on a contested permit application, when not required by law or ordered by the Chief of Engineers, should not be within the district engineer's discretion. (§(k)(1)

7. Letters of Permission

In accord with our belief that a thorough decision-making process should precede issuance of a permit which could adversely affect crucial environmental resources, we object to the issuance of blanket letters of permission for so-called "minor work" in navigable waterways. This problem was also recognized in the Committee report, (HR 92-1323, supra) which recommended that the Corps revise its procedures on "letters of permission to require public notice and an opportunity for comment on all applications for permit authorizations." (p. 6) Because of the importance of the permit application review procedure, EDF urges that §(g)(7), "Structures for small boats" be amended. This section allows letters of permission for these structures, "As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications for riparian proprietors for permits for piers, boat docks, moorings, platforms and similar structures for small boats." As with other permit application, we urge that alternatives to these structures be considered.

8. After-the-Fact Permits

The new regulations embody a reasonably tough policy against unauthorized activities. §(g)(12) However, §(g)(12) on "Unauthorized Activities" should state specifically that in appropriate cases the District Engineer may order not only changes in the work already completed but may order complete restoration.

We further urge that in administering this section the Corps should not be influenced by the amount of money already invested by violators. Further, we urge that violators who have been involved in building or dredging and filling without a permit be speedily prosecuted, and that convicted violators receive meaningful, rather than minimal, fines. It is unconscionable that individuals and corporations can force the hands of the Army Corps of Engineers by proceeding illegally with some kind of a project directly or indirectly affecting our navigable water ways. It is unfair to give such unscrupulous individuals an advantage over those citizens who properly go through the legal process in accordance with these regulations of applying for a permit. The regulations should state specifically that as of a certain date the Army Corps in considering a belatedly filed application for permit will not consider the amount of investment in such a project.

9. Compliance with the Greene County Decision

Finally, EDF is pleased to note that the new regulations follow the decision in Greene County Planning Board v. FPC, 455 F2d412, (2nd Cir., 1971) cert denied FPC v. Greene County Planning Board ____ US ____ (October 10, 1972) in requiring that, when requested, a NEPA environmental impact statement prepared by the agency circulate before a public hearing on an application is held. (§(g)(i)(iv))

Yours very truly,

James T.B. Tripp
Staff Attorney

JTBT:vp

June 6, 1973

Chief of Engineers
United States Army Corps of Engineers
Forstahl Building
Washington, DC 20314

ATTENTION: DAEN-CWO-N

Dear Sir:

The Florida Audubon Society hereby comments upon the proposed rules of policy, practice, and procedure regarding permits for activities in navigable waters or ocean waters which were published in the Federal Register, Volume 38, No. 90, May 10, 1973.

The Florida Audubon Society strongly endorses the rules as proposed and believesthat they will be of great assistance in protecting marine and estuarine resources under the jurisdiction of the United States Army Corps of Engineers. Particularly significant to the interests of environmental protection are the numerous sections of porposed rules which deal with policy determinations on the preservation of wetland areas under the Corps jurisdiction. These provisions greatly clarify and strengthen the position and responsibilities of the Corps in protecting vital wetland resources through the excercise of the authority of the United States under title 33 of the United States Code.

The proposed rules also do much to clarify the authority and policy of the Corps regarding requirements for after-the-fact permits and guidelines for the pursuit of prosecution in the event of violations. In this area, however, we feel that additional clarification of Corps procedure and the establishment of specific guidelines for the initiation of prosecution is needed. Such guidelines should include uinform criteria to detail activities for which after-the-fact permitting will be

"The Voice of Conservation" FLORIDA AUDUBON SOCIETY
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sufficient and differentiate such activities from those that will be subject to prosecution. The pursuit of prosecution on a discretionary basis cannot be in the public interest unless specific criteria to govern such discretion are established.

We must object strongly to Paragraph (7)-(E)-(iii) which exempts federal agencies from compliance with the water quality certification requirements established under the Federal Water Pollution Control Act as amended by Public Law 92-500. We can find no justification or rationale to support a policy that would allow the Federal Government to construct works that may violate a state's water quality criteria. A guiding philosophy of the federal legislation which established national water pollution control programs has been the policy which allows the states to utilize federal water quality criteria as a minimum floor for the adoption of local regulations. Many states have proceeded to establish water quality criteria much stricter than those provided by the Federal Government. To allow Federal projects exemption from these criteria would significantly weaken many state water quality protection efforts. It is our belief that equity requires federal projects to meet the same standards as those required of all other permit applicants.

In general, we congratulate the Corps of Engineers for the development of proposed rules that reflect a highly promising emphasis on environmental protection. The further modification of these rules, as we have suggested, would significantly enhance their effect and thus aid further in the protection of the public interest.

Sincerely,

HAL SCOTT
Executive Director

Charles Lee
Administrative Aide

HS:CL:sc

891 San Jude Ave.
Palo Alto, CA 94306

30 May 1973

Office of the Chief of
Engineers
Forrestal Building
Washington, D.C. 20314

attn.: DAEN-CWO-N

Dear Sirs:

With regard to the proposed regulations in 38 FR 12217-12230 (10 May 1973), I would suggest that you touch base with the "Endangered Species Conservation Act of 1966 and 1969" (16 USC 1668aa, et seq.). This is particularly important in your section on wetlands preservation, p. 12220.

That Act states: "It is ... declared to the the policy of Congress that ... the Secretary of Defense ... shall seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, ..."

A number of the species now on the domestic endangered species list are inhabitants of coastal wetlands, for example the Florida manatee, the salt marsh harvest mouse, the American crocodile, the American alligator, the Florida great white heron, the Californa clapper rail, and the California black rail.

Thank you for your consideration.

Most sincerely,

Eugene V. Coan

Eugene V. Coan, Ph.D.

BRISBANE CITIZENS FOR CIVIC PROGRESS
P.O. BOX 302, BRISBANE, CALIF. 94005

June 4, 1973

Chief of Engineers,
U. S. Army Corps of Engineers
Forrestal Building,
Washington D.C. 20314

Re; /Rules to Supersede Regulations in Title 333.

Sirs;

We understand that a new set of proposed U.S. Army Corps of Engineers regulations may be adopted in, perhaps, six months that would greatly strengthen the protection of, among other things, inland and S. F.Bay waters from fill other that that specifically in the public interest.

The Brisbane Citizens for Civic Progress was formed directly as result of local permission to fill 105 acres of the bay waters with dikes and garbage fill. We stood by helplessly and watched navigable waters disappear before our eyes in a short time for San Francisco's garbage. To this day, we see no benefit to the public whatsoever of such operations. We have instead felt pain, lawsuits, political disarray and other bad effects on the environment.

We wish for controls that are very tight to make sure that the other 150 acres, now undiked and unfilled will never be put to a similar fate. Besides the 150 acres "owned" by the San Francisco scavengers, another several hundred acres are owned by Southern Pacific and others, and they too are potential areas to be filled.

Very truly yours,

Paul F. Goercke, Ed.D.
Publicity

CWO, N

10 Hawthorne Lane
Corte Madera, Calif 94925
June 6, 1973

Chief of Army Engineers
Forrestal Building
Washington, D.C.

Dear Sir,

We urge you to quickly adopt into law proposed new and stricter regulations concerning building upon marshlands. This is of primary importance. Our disappearing wet-lands are in your care. Only you can save what is left.

As you know, the Corte Madera bayfront is now the subject of an application for fill and destruction. Please help us to save it.

Sincerely,
Nan Dunnison
Mrs. Gilbert Dunnison

Copy to Sen. Tunney

June 7, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Gentlemen:

We have just heard of the proposed changes in regulations increasing the jurisdiction of the Corps of Engineers to include wetlands as newly defined. We fully approve the extended authority covering the historical margins of the marshes, as recorded 75 years ago.

As residents of Corte Madera, California, where we have owned our home for 11 years, we have watched the quality of life deteriorate. We have felt the development of Marin County must be stopped, in order to preserve the land, the air and water at least as they are today. But also, we felt powerless to make any significant move to slow the relentless progress which threatens our land.

If the U. S. Army Corps of Engineers can halt the building on filled land and the paving of large areas of this land, then this is our first hope of turning the tide of progress, which we believe must be done in the public interest.

Please let us know what we can do to help effect the proposed changes so that the Corps of Engineers will be accorded increased authority to help us save our County.

Yours truly,

Ellis C. and Ann Anderson

Mr. & Mrs. Ellis C. Anderson

8 Taylor Lane
Corte Madera, California 94925

39 Edison Avenue
Corte Madera, Ca 94925
June 6, 1973

Office of the Chief of Engineers
Forrestal Building
Washington D.C. 20314

Re: Filling and construction upon bay wetlands

Dear Sir:

We applaud the efforts by Corps of Engineers to halt further destruction of a precious commodity - the vanishing marshland. We urge the adoption of proposed new regulations that will prevent any more building or filling on what is left of wetlands.

Public interest cries out for a stringent exercise of the authority of your body to halt the developers who otherwise would continue to encroach upon these lands until the last acre was filled. Surely, enough scientific data is now available to corroborate the opinion of ecologists that preservation of bay lands is crucial to our own survival.

Yours very truly,

William G. Gordon
JoAnn S. Gordon

cc: Col. James Lammie
Senator John Tunney

June 7, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Dear Sirs:

On June 3, 1973 an article appeared in the San Francisco Chronicle concerning proposed U.S. Corps of Engineers' regulations covering the fill and construction on, of Bay Wetlands.

Among other points the article stated that the Corps of Engineers will have authority to prevent and even stop projects that require filling, should enough people object.

As an environmentalist I heartily approve the adoption of these rules and I would like to obtain any publications concerning this matter that are available from your office or any other source.

Sincerely,

Clell E. Harris

Clell E. Harris
48 Mohawk Avenue
Corte Madera, California
94925

CC

129 Yolo
Corte Madera, Ca 94925
June 6, 1973

Chief of Army Engineers
Forrestal Building
Washington, D. C. 20314

Sirs:

Please implement your proposed new regulation wherein no more filling or construction of bay or wetland shall be permitted. Translate this into LAW. MAKE IT EFFECTIVE AT ONCE. We need an increase in your jurisdiction. This is an area of intense public interest. Safeguard what little remains of marshlands. This is of critical importance here in Marin at a time when a developer plans to destroy an important marsh. Please do not allow this.

Sincerely,

Judith Horne

cc: Senator Tunney

June 4, 1973

The Chief of Engineers
The United States Army Corps of Engineers
Forrestal Building
Washington, D. C. 20314

Dear Sir:

We have read a news story in our Sunday papers which states that the Corps of Engineers proposes possible regulations to stop any kind of wetland fill in San Francisco Bay.

We hope that you will stop the filling of any kinds of land around the bay, completely and absolutely.

We find it difficult to believe that there can any need "in the public interest" for any further fill -- whether a municipal garbage dump, or a bridge, or a marina development.

We have seen piecemeal efforts by communities around the bay to stop projects here and there, and we have seen the Bay Conservation group -- BCDC --still giving up land.

We are pessimistic and somewhat cynical about these small efforts to stop the filling of what is left of the bay, and believe only a large scale effort, such as the Corps can accomplish, is the only solution.

We have heard our own city government here in Alameda -- still using a garbage dump in the San Leandro estuary, and still encouraging real estate develpers -- say that garbage is "a regional problem."

We think garbage and bay fill is everyone's problem, and while our tax laws may be quite unjust, we think it quite possible we may all have to pay higher taxes to install equipment to process our garbage. It seems quite ridiculous to put some 26 billion in thespace effort, and then wring our hands about our garbage and continue dumping it into a precious natural resource.

We are sure many, many people agree with us in this question.

Sincerely

Lesley N Forden

Mr. and Mrs. Lesley N. Forden
1448 Page St..

20-733 O - 73 - pt. 1A - 42

113 Yolo Street
Corte Madera, Ca. 94925
June 6, 1973

Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Re: New proposals re: filling of bay wetlands

Dear Sir:

Thank you for your efforts to preserve what little remains of our wetlands. We need your help to stem the tide of developer predations on incomparably valuable resources. More and more we apparently must look to the Army Engineers for help to preserve our environment.

Yours very truly,

Anne Tamimi

cc: Senator Tunney
Senator Cranston

111 Edison St.
Corte Madera, Ca.
94925
June 6, 1973

Dear Sir:

Thank you for your efforts to tighten up regulations for construction & fill on bay fron and marshes. This new regulation is desperately needed throughout the nation. We are particularly beseiged by development on our last remaining marsh in Marin County. We encourage your efforts and hopw the new rules will save our bay front. Thank you.

Juliet Kraeger

Mrs. Alfred Kraeger

June 9, 1973

Office of Chief of Engineers
U.S. Corps of Engineers
Forrestal Building
Washington D.C. 20314

Subject: Title 333--new rules.

Dear Sirs:

I support the proposed rule change which would supersede old regulations described in Title 333 of the U.S. Codes.

I live in the Eastbay area of the San Francisco Bay. Our bedroom community of 5,000 middle and lower income homes has no access to the bay for several miles both north and south. The historic marshland between our homes and the bay has been developed for industry in a narrow corridor.

Presently the shoreline for approximately 10 miles to the north and south is undeveloped and all this area is described as historic marshland. The 8 miles of shoreline to the south of our industrial area is under study by a joint agency composed of city, county, and special districts.

There are a number of local citizens who are becoming aware of the great potential of these as yet undeveloped ex-marshlands. They see them as possible nature study areas, trailways, open space, and as providing new access to the bay.

Since so much of San Francisco Bay has been filled, these same citizens are also interested in returning these areas (in part) to their natural state.

We look to some agency beyond our local jurisdiction to help us set priorities for land use that would better reflect the public interest. We certainly need the opportunity to examine all alternatives of use.

Sincerely,

Barbara Shockley

Barbara Shockley (Mrs. C.W)
1890 Bockman Road
San Lorenzo, Ca 94580

cc. Colonel J.L. Lammie
San Francisco Dist
U.S. Corps of Engineers.

Tropical Audubon Society, Inc.
MIAMI, FLORIDA

10100 Pan American Drive
Miami, Florida 33157

June 7, 1973

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Office, Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Reference: DAEN-CWO-N

Gentlemen:

The Board of Directors of Tropical Audubon Society wishes to support the new proposed regulations that supercede the present regulations in 33CFR 209.120 and 209.130.

These regulations prescribe the policy, practice and procedure to be followed by all Corps of Engineers in connection with applications for permits authorizing work in or affecting navigable waters, discharge of dredge and fill material into navigable water and the transportation of dredge material for the purpose of dumping it into ocean waters.

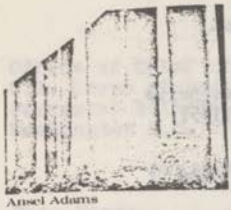
We feel that this is a progressive step in the proper direction.

Sincerely yours,

William B. McCreary

William B. McCreary
Conservation Coordinator

WBM:ld



Loma Prieta Chapter

Sierra Club
1176 Emerson Street Palo Alto, California 94301 (415) 327-8111
San Benito, San Mateo, Santa Clara, Santa Cruz Counties

June 4, 1973

Chief of Engineers
U.S. Army Corps of Engineers
Forrestal Building
Washington, D.C.

Dear Sir:

On behalf of the Loma Prieta Chapter of the Sierra Club, I am writing to express our interest in the new rules proposed to supersede the Corps regulations in Title 333 of the U.S. Code.

The Loma Prieta Chapter speaks for the environmental interests of some 16,000 Sierra Club members in the San Francisco Bay area. We have long been concerned with protection of the Bay, a vastly depleted resource.

To this end, we support stringent regulations on any activities affecting the disposition of baylands. We urge the Corps of Engineers to exert strong regulatory control on any developments within its jurisdiction. Effective leadership by the Corps in the investigation and control of illegal Bay filling is urgently needed to protect the remnant of this great national resource.

Cordially,

T. M. Ames

T.M. Ames, Vice-Chairman
Loma Prieta Chapter Executive Committee

Save San Francisco Bay Association

P. O. Box 925 • Berkeley, California 94701 • (415) 849-3053

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PURPOSE

- Protect open water
- Promote regional planning
- Plan for conservation of wildlife
- Create boating and recreational facilities
- Beautify the shoreline

May 22, 1973

Federal Reference No:
DAEN - CFO - N

James L. Kelly, Brig. Gen. U.S.A.
Acting Director Civil Works
Office of Chief of Engineers
Forestal Building
Washington, D.C. 20314

Dear General Kelly:

This is to commend the Corps of Engineers for the new regulations which, in our opinion, will more completely protect the public interest in preventing destruction of irreplaceable and valuable resources.

We hope that these interim guidelines will become permanent. In particular, the revised "grandfather" clause is of importance to our area where one city, Albany, and a few persons filling the Bay have claimed exception because of "paper plans" although the work itself has been minimal. These plans were sanctioned a decade ago before information was generally available on the value of maintaining as large a tidal area of the Bay as possible.

Sincerely,

William E. Siri
President

WES:j

Telephone 343-7339

ROBERT O. DELZELL
1345 DE SOTO AVENUE
BURLINGAME, CALIF. 94010

June 4, 1973

Office of the Chief of Engineers
Forrestal Building
Washington D.C. 20314

Dear Sir:

I heartily agree with the proposed new regulations under which the Corps of Engineers can halt Bay fill projects which are not in the public interest.

I am particularly concerned about San Francisco Bay but also feel that all of our national waterways need protection and the sooner the better.

I have great respect for the integrety of the Corps of Engineers, but I believe the Corp must assume a new role as the guardian of our waterways and as an agent to return our waterways back to a more natural condition.

I am firmly convinced that this years flooding is the direct result of our ill-advised efforts to dam, dike and divert the water rather than protecting and enhancing our watersheds.

I agree with Supreme Court Justice Douglas that the Corps should become the guardian of the environment in America. This is a worthy and absolutely essential undertaking.

Sincerely yours,

Robert O. Delzell

June 3, 1973

Office of the Chief of Engineers
US Army Corps of Engineers
Forrestal Building
Washington DC 20314

Sir:

We laud and support the Corps' proposed regulations to restrict the filling of US marshlands. After 12 years in Maryland and the District of Columbia, where we observed the careless, avaricious filling of wetlands in Maryland and Virginia, we feel that every effort should be made to save each possible square foot of wetlands remaining.

We have moved back to the San Francisco Bay area and find that there is the same concerted effort to destroy forever the pitifully few acres of marsh and tidelands not covered with parking lots and developments. We endorse your proposals to stop wanton filling, and whenever possible, to reverse and recover operations under way.

We have learned that it is true that what we have always felt is wrong about filling marshlands is that it is destroying us all: people, birds and animals, beauty, fresh air, and clean water.

Please continue to push for your regulations.

Don H Adams

MR. & MRS. DON H. ADAMS
455 Montecito Drive
Corte Madera, Calif. 94925

San Francisco Bay Association
P. O. Box 925 • Berkeley, California 94701 • (415) 849-3053

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PURPOSE

- Protect open water
- Promote regional planning
- Plan for conservation of wildlife
- Create boating and recreational facilities
- Beautify the shoreline

June 11, 1973

Lieutenant General Frederick C. Clarke
U.S. Army Corps of Engineers
Washington D.C.

Dear General Clarke:

The Save San Francisco Bay Association would like to generally commend the Corps of Engineers for its new policy, practice, and procedure proposals, as published in the Federal Register.

We particularly want to make the following comments:

1. The new definition of the jurisdiction of the Corps is good. It more nearly protects the public's need for adequate regulation of navigable water.
2. The grandfather clause, which in the old regulations permitted continuing irreversible destruction of navigable waters despite public interest, is greatly improved. This section is of particular importance to the San Francisco Bay area, and we strongly recommend that the new laws not be weakened. If any revisions are made, we would appreciate having advance notice.

Sincerely,

Mrs. Clark Kerr
Vice President

ck/gaa

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

ER-73/675

JUN 27 1973

Dear General Kelly:

We have completed our review of the Federal Register Notice, 33CFR, Part 209, "Permits for Activities in Navigable Waters or Ocean Waters." The following comments are submitted for your consideration and use in finalizing these regulations.

We are concerned that the proposed regulations and the Acts on which they are based do not provide any specific assurance that the views of the Secretary of the Interior will be considered. For example, these regulations omit any reference to a problem which has been often surfaced by us in the past that a permit should only be granted for marine-oriented purposes. Work for nonmarine purposes such as residences, apartment complexes, restaurants, and other commercial structures over navigable waters either on pilings or fill which are not dependent on water access can be located on alternative upland locations. We would like to see the regulations support such a policy. Further, the Department has also expressed its concern for shoreline development in the absence of an overall plan of development (see our views on the Alderbrook Inn case on Washington's Hood Canal). We believe that proper evaluation of an individual permit application can only be undertaken when considered in terms of its compatability with the overall plan of development for the study area.

We also suggest that these regulations be written in a manner which would be more conducive to carrying out the programs of this Department and the Administration for the protection of the Nation's shallow waters, wetlands, and the dependent living resources and human uses of these waters and wetlands. This particular concern is implicitly addressed throughout this letter with particular emphasis given to unauthorized activities. We suggest that a much stronger Federal position be established regarding these illegal activities and suggested language is provided later in this letter.

Paragraph (d)

We believe this section of the regulations requires further clarification as to the definition of "navigable waters" as it relates to these permit activities. For example, would these permit regulations apply to water bodies such as Lake Coeur d'Alene, Idaho, Lake Tahoe, California and Nevada, and like impoundments throughout the Nation. Section (d)(2), relating to PL92-500, defines navigable waters as the "waters of United States including territorial seas" and would appear to encompass all water bodies.

To supplement the general observations cited above, we submit the following comments on specific subsections of these proposed regulations.

Paragraph (d)(5)

The definition of "fill material" is unduly restrictive. We suggest that it be reworded as follows:

> (5) The term "fill material" means any material artificially deposited or discharged into the navigable waters, submerged lands or shorelands which results in creating fast lands or raising the elevation of lands beneath navigable waters.

Paragraph (c)(3)

The proposed rules in this paragraph, "Activities Requiring Authorizations," provide that ". . . all structures or work in the navigable waters of the United States except for bridges and causeways . . . and . . . discharge of dredged or fill material into navigable waters . . . done by or on behalf of any Federal agency, . . . are subject to the authorization procedures of this regulation."

The interpretation heretofore placed upon Sections 9 and 10 of the March 3, 1899, Act, 33USC401 & 403, is that when a project authorized by Congress is identified by way of location in the authorizing Act or supporting documents such Congressional approval constitutes compliance with such Corps of Engineers' regulations. Accordingly, we believe that Part 209.120(e), especially including subparagraph (3)(ii), should be recast to comport with our understanding of the 1899 Act.

Paragraph (f)(1)

This section is strongly oriented towards consideration of general environmental concerns. We suggest that such concerns should also include an assessment of the engineering-geologic feasibility of the proposed action. This assessment would consider, when appropriate, foundation conditions, erosion conditions, and compactability as well as internal drainage of land disposal areas and the subsequent suitability for development of fill sites. In addition, the relationships and impacts on fresh water resources should also be assessed, especially where groundwater aquifers may extend into offshore areas.

Paragraph (f)(2)

No mention is made in these criteria of evaluation of the water dependency or necessity for water orientation of a proposal. Since the basis of Federal authority rests on the navigation servitude of the waters and the primary and correlative public rights that this servitude embraces, water dependency should rank foremost among the criteria for evaluation. We strongly believe that additions to the language of paragraph (f)(2) are needed to reflect this factor. Thus, at the end of paragraph (ii), we suggest replacing the semicolon with a comma and adding, "considering the water dependency of the proposal and the necessity for its water orientation from the public interest viewpoint;." Also, in paragraph (iii), in the second line, we suggest inserting the words "on public and private rights and" between the words "have" and "on."

Paragraph (f)(3)(ii)

Local land-use classifications may conflict with State or regional plans. This section should be reworded to specifically exclude local plans if outdated and inconsistent with State and regional plans.

Paragraph (g)(1)(i)(a)

This section would be strengthened by adding reference to the public interest. The following phrase should be added

to the first sentence, ". . . in the absence of overriding public interest." The following phrase should be added to the second sentence, ". . . or is determined to be detrimental to the public interest."

Paragraph (g)(1)(ii)(a)

We suggest broadening the protection of proposed civil works activities of the Corps of Engineers to include all proposed Federal projects or programs.

Paragraph (g)(2)(i)

This part should be strengthened either by elimination of "to the maximum practical extent" concerning coordination with interested Federal, State, regional, and local agencies and the general public, or by stating definitely that, in the event that such coordination is not possible at the time the Federal project is being considered, the non-Federal work will subsequently require thorough review by interested parties under regular permit evaluation procedures, with particular attention to the cumulative impacts of both public and private projects.

Paragraph (g)(2)(ii)

We must question the merits of authorizing long-term, periodic maintenance dredging, simultaneously with the issuance of permits for dredging channels, slips or other navigation projects. Since the initial and subsequent maintenance dredging are often separated by considerable time, during which biological conditions could change significantly, we would want to keep open the option of reporting on any maintenance dredging at more frequent intervals. We believe that the initial and maintenance dredging and filling impacts should be cumulatively considered for the granting or denial of a permit but further believe that unless the review interval is 3 to 5 years that these should be separately authorized.

A permit for dredging which authorizes the periodic maintenance dredging of a project should include consideration of the problems that may be created when the approved spoil disposal sites become filled.

Paragraph (g)(3)(i)

The meaning of the term "wetlands" should be modified to "lowlands covered with shallow and sometimes temporary or intermittent waters" to be consistent with the longstanding definition in Wetlands of the United States, Circular 39, issued 1956, reissued 1971, U.S. Department of the Interior Fish and Wildlife Service. (Copy attached)

The Nation's waters and wetlands are being evermore intensively exploited for man's uses - occupied, encroached upon, developed, degraded and destroyed. The shallows and wetlands are being lost by piecemeal nibbling and by extensive dredging, filling, drainage, and occupation. In too many instances, public rights in navigable waters and their shorelands are being ignored or subverted to private gain, and public resources and environmental values are being destroyed. Throughout the Nation, the situation has become critical over large areas.

These rich shallow waters and wetlands are food baskets and nurseries for coastal sea life, waterfowl, fur animals, and many fresh water fishes. Generally, these waters and wetlands occupy only a narrow fringe along the upland. On the land side, this fringe begins at about a foot or so above the normal tidal or other water level fluctuation, and it extends into the water essentially to the limit of depth occupied by green plants.

The upland edges of these habitats, around the zone of fluctuation, are especially essential to the overall productivity; and unfortunately, this zone is most vulnerable to developmental damages. This is so because much of the total nutrient richness depends, utterly, on the exchanges of water, essential dissolved chemicals, and suspended organisms and detritus between the landward meadows and marshes and the outer waters. Thus, the "high" meadows and marshes are of most special concern and most needful of protection from unwarranted destruction by land oriented development.

Shallow waters and wetlands support the majority of our commercial fisheries, nearly all of our sport fisheries and waterfowl resource, and a great variety of birds and mammals, as well as less commonly recognized valued wildlife. These

habitats also are esteemed for their scenic, natural area, open space, and recreational resources, valued as common sites of historic and archeologic landmarks, and highly useful as outdoor laboratories for scientists and nature students. They are, of course, also essential sites for ports, harbors, and navigation uses; and they contain great mineral wealth both in the chemicals dissolved in the waters and in oil and other mineral bodies of the underlying rocks.

Paragraph (g)(3)(iii)

Concerning the district engineer's review of particular wetland areas in response to new applications, "the field representative of the Secretary of the Interior" should be replaced with "the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife" in the list of consultants.

Paragraph (g)(6)

This section defines recreational values too narrowly. Recreation and aesthetics should be values recognized by themselves and not require specific "classifications, controls or policies" to ensure "full evaluation of the general public interests." Specific applications should apply to more than just wild and scenic rivers, historic sites, and congressionally designated recreation areas.

Our primary interest is in paragraphs (g)(6)(i) and (6)(ii) on page 12221, and we believe that "natural" areas should be mentioned particularly. We suggest that, under (g)(6)(ii)(b) or as a separate section, the following be added: "Cognizance should be taken of the sites included in the National Registry of Natural Landmarks to fulfill the intent of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4331)." Additions to and deletions from the National Registry of Natural Landmarks are published at intervals in the Federal Register.

Also under (g)(6)(ii)(c), add "national parks" and "national monuments" and change it to "list of areas named in acts of Congress or Presidential Proclamations." Quite a number of national parks and monuments contain navigable waters.

Paragraph (g)(6)(ii)(c)

In addition to those named, the following should be added ahead of "National Rivers" - "National Wilderness Areas." Also, we suggest that in place of "or established for similar purposes" that the following be inserted at the end of the sentence: "and such areas as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries."

Paragraph (g)(9)

We believe this section of the regulations should be modified to expand the scope of the Corps of Engineers' evaluation of permit applications when the structures described in these applications are located on the Outer Continental Shelf but do not require a permit or lease from the Department of the Interior. In these instances, the scope of the Corps' evaluation should include an assessment of the proposal's impact on fish, wildlife, and their environment as required by the Fish and Wildlife Coordination Act along with its evaluation of impacts on navigation and national security.

Paragraph (g)(11)(ii)

In the last sentence of this section, we suggest adding language to the effect that unauthorized work already completed may be required to be restored to natural conditions.

Paragraph (g)(12)

We believe this paragraph is too permissively worded. The following language is suggested for its revision:

(12) Unauthorized Activities

(i) When the District Engineer has information that an unauthorized activity is occurring, he shall promptly advise the person concerned of the requirements of law and order him to immediately stop the activity. The District Engineer shall then inspect the site of the activity to

determine whether the activity requires authorization and should be authorized (see paragraph (e) above). In making such inspection, particular attention will be given to the nature of the activity, its probable impact on public rights and other factors of consideration (see paragraphs (g)(1) through (g)(11), above), and the overall necessity and desirability of the activity in the public interest. Any failure of the person to comply with an order of the District Engineer shall be promptly referred to the U.S. Attorney and DAEN-GCK for appropriate legal action.

(ii) If the unauthorized activity involved the discharge of dredged or fill material into navigable waters or the dumping of dredged material in ocean waters, the District Engineer shall immediately refer the matter to the Regional Administrator of the Environmental Protection Agency for appropriate action leading to possible imposition of civil penalties and to the U.S. Attorney and DAEN-GCK for any other appropriate legal action. After-the-fact authorization will in no case be issued for the discharge of dredged or fill material in navigable waters, for the dumping of dredged material in ocean waters, or for the transportation of dredged material for the purpose of ocean dumping.

(iii) If the unauthorized activity did not involve such a discharge of dredged or fill material nor ocean dumping of dredged material and unless circumstances of the public interest support legalization of the activity, the District Engineer shall deny any application for authorization and promptly refer the matter for appropriate legal action to the U.S. Attorney and DAEN-GCK.

(iv) In the case where an overriding public interest indicates that the unauthorized activity should be permitted, the District Engineer shall advise the person concerned that a permit will be required before the activity can be resumed and

instruct him as to the proper manner and form of application. The District Engineer may, before or during processing of the application, order such changes in the completed work as may be necessary to protect the public interest.

(v) Where authorization is determined to be in the public interest, processing and evaluation of the application for after-the-fact authorization will in all other respects follow the standard procedures of this regulation. The standard permit form will be used, omitting any inappropriate conditions, and including whatever special conditions the District Engineer finds essential to prevent or mitigate effects of the activity adverse to the public interest which have occurred or might occur. If the applicant declines to accept the conditions of the permit or fails to take the preventive or corrective actions prescribed in such conditions, the District Engineer shall refer the matter to the U.S. Attorney and DAEN-GCK for appropriate legal action.

(vi) As in draft regulations.

Paragraph (g)(14)

This section does not include the aesthetic impact of overhead power transmission lines. We suggest that the rules be revised to incorporate location and design concepts illustrated in "Environmental Criteria for Electric Transmission Systems", published jointly by the Departments of Interior and Agriculture in 1970.

Paragraph (h)(2)(i)

This is a general listing of items requested on the application and the accompanying plan. From our experience in the review of Corps of Engineers' public notices, we have often found the information provided inadequate. In addition to information now provided, we recommend that applicants provide information on the use of adjoining property. Specifically

the applicant should show on the plan, the location and dimensions of existing structures located on or over the tidelands of adjoining property. This would be in line with requirements in 209.120(j)(1), page 12226

Paragraph (i)(1)(ii)

Please delete from this section of the regulations the requirement to furnish the field representative of the Department of the Interior with copies of the public notice.

Paragraph (i)(1)(iv)

The next to last sentence in this section refers to "proposed final environmental impact statement" and the last sentence refers to "draft environmental impact statement." These appear to be one and the same and are confusing to the reader. It is suggested that "draft" be substituted for "proposed final" in the next to last sentence.

Paragraph (i)(2)

The special concerns of wetlands, fish and wildlife, and sanctuaries are omitted from this particular procedure. We suggest the insertion of the following as a new paragraph:

> (v) "If the activity will be located on or so as to affect adversely a biologically productive wetland, an estuarine or marine sanctuary, a fish and wildlife resource, or the human uses dependent upon such wetland, sanctuary, or resource (see paragraphs (g)(3), (g)(4), and (g)(18) above), the District Engineer shall advise the applicant of the special consideration to be accorded these matters. The District Engineer shall assure that such consideration is carefully and fully accomplished; shall facilitate the adoption by the applicant of the advice and recommendations made by officials of the responsible Federal and State fish and wildlife agencies, the sanctuary administering agency, and other concerned environmental protection agencies, and shall appropriately condition any permit issued for the activity as required to reflect the public interest in these matters."

To the above language, we suggest adding the language of paragraph (vii). The series of remaining paragraphs should then be appropriately renumbered.

Paragraph (j)(1)(iv)

This section would be improved if it were revised to read as follows. "A sketch showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;". Further, we believe the word "sketch" should be replaced by "plan and elevation scale drawings." The word "sketch" is too likely to be interpreted as requiring merely a very rough, imprecise delineation without scale or dimensions, except the specified depth of water.

Paragraph (j)(1)(ix)(a)

The special concern for wetlands and fish and wildlife should be mentioned in public notices. We suggest the following new paragraph be inserted at the end of the cited paragraph:

> (3) "If the activity involves fish and wildlife resources or uses of the wetlands on which these resources and uses depend, the public notice will note that consultation on these matters is required by the Fish and Wildlife Coordination Act as stated in paragraph (g)(4) above."

Paragraph (j)(1)(ix)(b)

Again, we believe this section of the regulations should be modified to expand the scope of the Corps of Engineers' evaluation of permit applications when the structures described in these applications are located on the Outer Continental Shelf but do not require a permit or lease from the Department of the Interior. In these instances, the scope of the Corps' evaluation should include an assessment of the proposal's impact on fish, wildlife, and their environment as required by the Fish and Wildlife Coordination Act along with its evaluation of impacts on navigation and national security.

Paragraph (j)(1)(xi)

It would be useful to reviewers if a section xi were added to 209.120(j)(1) to include a listing by dates, all previous permits, and public notices issued for this activity.

Paragraph (m)(3)

We are concerned about the impact of the authorization of minor work by a letter of permission. This places the entire decision on what constitutes "minor" proposed work solely at the discretion of the District Engineer. We suggest that in addition to the wording quoted above, a detailed listing of types and extent of work that will be considered minor should be specified. Otherwise, we anticipate a wide variation in the interpretation of what constitutes minor work by various district engineers.

We recommend that any overwater occupied structure be excluded from the minor category.

Paragraph (n)(5)

We consider a duration limit of 10 years to be excessive and unwarranted. We suggest that the maximum duration be limited to the usual 3 years or to 5 years which would accord with the regulations of the Environmental Protection Agency for permits issued under the Federal Water Pollution Control Act.

Paragraph (q)

We believe a paragraph should be inserted to provide that permittees shall be required to monitor the effects of their activities, particularly such effects as dispersion of turbidity and pollutants from dredging and spoiling operations, as well as other environmental effects, and report in timely fashion to the District Engineer on the progress of work, completion of work stages, findings from monitoring, and other facts necessary to supervision.

Further, we believe another paragraph should be inserted under this heading covering the relevant enforcement provisions of Section 309 of the Federal Water Pollution Control Act and of Section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972. These provide for civil penalties, imposable respectively, against unauthorized discharge of dredged and fill material in navigable waters and against unauthorized dumping of dredged material in ocean waters.

The proposed rules and regulations deal with matters which could impact on a variety of extremely important international negotiating objectives. Accordingly, we recommend that the Corps of Engineers defer the finalization of these rules and regulations until they have been reviewed from the standpoint of international goals and objectives. We further recommend that these rules and regulations be submitted to the Department of State, Chairman of the Law of the Sea Task Force for review and comment. Your Assistant Secretary of Defense for International Security Affairs is a member of the task force and may be in a position to seek an expedited review of this material by the task force.

We trust the foregoing comments will assist you in finalizing your regulations on this subject.

Sincerely yours,

Assistant Secretary of the Interior

Brigadier General James L. Kelly
Acting Director of Civil Works
Department of the Army
Corps of Engineers
Washington, D. C. 20314

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE ADMINISTRATOR

28 JUN 1973

Brigadier General James L. Kelly, USA
Deputy Director of Civil Works
Office of the Chief of Engineers
Department of the Army
Washington, D. C. 20314

Dear General Kelly:

Pursuant to our responsibility under Section 309 of the Clean Air Act, the Environmental Protection Agency has reviewed the Corps of Engineers' proposed rules, "Permits for Activities in Navigable Waters or Ocean Waters," as presented in the May 10, 1973, Federal Register. We wish to commend the Corps of Engineers for a generally thorough and environmentally protective set of procedures.

EPA's detailed comments on the regulations are enclosed. These comments raise several issues which we believe should be clarified or strengthened prior to final promulgation.

EPA's mandate to protect and enhance water quality gives us a particular interest in effective enforcement of these permit programs, and we note that the permit regulations now reference Corps enforcement regulations. We understand that the enforcement regulations are currently being revised; EPA will plan to comment when these regulations are proposed and will provide any assistance the Corps may desire in developing the enforcement procedures. In addition, we would be pleased to work with the Corps in developing a Memorandum of Understanding between our agencies to clarify coordination procedures to be followed in carrying out our joint responsibilities under Section 404 of the Federal Water Pollution Control Act and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972.

We appreciated the opportunity to review these regulations. We look forward to continued cooperation with the Corps in the development of related procedures and the conduct of the permit programs.

Sincerely yours,

Sheldon Meyers

Sheldon Meyers
Director
Office of Federal Activities

Enclosure

ENVIRONMENTAL PROTECTION AGENCY COMMENTS ON CORPS OF ENGINEERS PROPOSED REGULATIONS FOR "PERMITS FOR ACTIVITIES IN NAVIGABLE WATERS AND OCEAN WATERS", 33 CFR PART 209, DATED 4 MAY 1973

General -

The concept and coverage of the proposed regulations are good and should help strengthen environmental protection in permitted activities for work in navigable waters, disposal of dredged or fill material in navigable waters, and ocean dumping of dredged material. In particular, incorporation of specific criteria to protect wetlands is a significant and much needed improvement. Such criteria could serve particularly to meet the goals and objectives of Section 404 of the Federal Water Pollution Control Act (P. L. 92-500).

Two of the subject permit programs, under Section 404 of P.L. 92-500 and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (P. L. 92-532) involve statutory responsibilities of the Administrator of EPA. In our view, the regulations as proposed deal properly with EPA's provision of guidelines and criteria for Section 103 and 404 permits, for State certification pursuant to Section 401 of P.L. 92-500, and for EPA participation in review of permit applications. However, we offer below recommended changes to the permit issuance, surveillance, reporting and enforcement procedures which strengthen both the COE and EPA roles in these activities.

We believe the Administrator's authority under Section 105(a), P.L. 92-532, to assess a civil penalty of up to $50,000 for each violation of a provision of Title I of that Act can be used as an enforcement mechanism for Section 103 permits, in addition to enforcement actions by the Corps of Engineers. Similarly, the EPA and State enforcement authority provided in Section 309(a) and (b), P.L. 92-500, can also be considered as an adjunct to COE enforcement of Section 404 permit regulations. The Administrator may issue orders under 309(a)(3) to persons violating Sections 301 and 307 of P.L. 92-500, and may commence civil action under 309(b). Section 301, in turn, provides that persons must comply inter alia with Section 404. Section 307(a)(5) provides that toxic effluent standards shall apply to sources designated by the Administrator including (after consultation with the Secretary of the Army) disposal of dredged material.

These responsibilities and our general mandates to protect and enhance water quality give EPA a considerable interest in effective enforcement of the subject permit programs. The revised COE enforcement regulations, referenced in paragraph (q)(3) of the permit regulations, should provide mechanisms for EPA (and, where appropriate, State) cooperation in surveillance and enforcement procedures.

Specific

Paragraph (b)(7):

The last sentence of this paragraph is a paraphrase of Section 404(c) of the Federal Water Pollution Control Act, and slightly departs from

the meaning of the statute. We strongly recommend that the wording of Section 404(c) be followed exactly respecting the Administrator's authority to prohibit the specification of any defined area as a disposal site, and to deny or restrict the use of any defined area for specification as a disposal site, after notice and opportunity for public hearings.

Paragraph (d)(1) and (2):

We recommend that the definition of navigable waters be modified to reference EPA's regulation for implementing Section 402 permits under P.L. 92-500 by adding after the present sentence: "See 40 CFR 125.1(o) for a listing of waters included in this term." Such an addition would be of assistance to the public in clarifying the definition of navigable waters.

Paragraph (d)(5):

The definition of "fill material" should as a minimum cover "any material discharged into navigable waters for the purpose of and/or which results in creating fast land or other intended elevation of lands beneath the navigable waters." The suggested definition implies an after-the-fact authorization which would defeat the purposes of environmental protection.

Paragraph (f)(2):

We generally concur with the criteria for evaluating applications, particularly with the provisions (i) and (ii) that the need for the work must be considered and alternative locations evaluated. These provisions should be strengthened by adding a specific consideration

of the water dependency of the proposed structure or work and the need for orienting the proposal to the water environment from a broad public interest perspective. We commend the requirement in the wetlands paragraph which calls for a primary consideration of whether the proposed activity is dependent upon wetland resources and environment and whether feasible alternative sites are available. We believe that a similar approach should be utilized in the general policies section.

The general criteria should also be augmented by a specific provision which makes it clear that the district engineer will consider not only the primary effects of the proposed structure or work but also the environmental effects of the project or development of which a proposed structure or work may be a part. The district engineer should consider whether the work for which the permit is sought will lead to secondary or adjunctive activities that will cause additional discharges to navigable waters or air pollutant emissions, for example. Such considerations would be in keeping with the National Environmental Policy Act, as well as the Federal Water Pollution Control Act, as amended, and the Clean Air Act, as amended.

Paragraph (g)(1)(i)(a):

This paragraph indicates that, because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. We suggest that this assumption may be questioned on environmental grounds. Certain lands are intrinsically

unstable and attempts at stabilization should normally not be permitted. Outstanding examples are migrating beaches, sand bars, and river meanders. These can be stabilized only at the expense of severely distorting the natural order. We believe that the subject paragraph should cite this reservation to the general COE policy.

Paragraph (g)(3)(ii), Effect on Wetlands:

The functions of wetlands listed under (ii) should include the contribution to water quality improvement. Recent studies indicate that wetlands possess a high waste assimilation capacity and enhance water quality by removing inorganic nutrients, including nitrates, ammonia, and phosphates.

Paragraph (g)(3)(iv):

We recommend that this section be revised to reflect EPA's authority under Section 404(c) to prohibit specification of disposal sites.

Paragraph (g)(5)(ii):

This paragraph should acknowledge that overriding EPA's objections to issuance of a permit is subject to specific limitations: (1) provisions of Section 404(c), P.L. 92-500, wherein the Administrator may prohibit or restrict the use of a disposal site "whenever he determines . . . that the discharge . . . will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife,

or recreational areas;" and (2) provisions of Section 103(c) and (d), P.L. 92-532, wherein the Secretary of the Army must request a waiver from the Administrator to authorize dumping at a site that would violate the ocean dumping criteria set under Section 102(a) or the Administrator's designations under Section 102(c), and the Administrator may refuse the waiver if the dumping would "result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas . . . . " This suggested change could be effected by referencing in the last sentence of paragraph (g)(5)(ii), the provisions of paragraphs (b)(7) and (b)(8). A similar reference or specific citation of the Administrator's authority should also be included in paragraph (g)(17)(iv).

Paragraph (g)(12):

The proposed rules for dealing with unauthorized activities have been strengthened and contain most of the elements which we believe should precede any authorization of such work. In our view, these elements should include as a minimum: (1) stopping the activity, (2) inspecting the work site to determine whether the activity should be permitted considering the nature of the work, need for the work as regards the general public interest and other factors (paragraph (g) considerations); (3) notifying the EPA Regional Administrator and State water pollution control authorities of any unauthorized discharge of dredged or fill material into navigable waters for possible enforcement actions under Section 309 of P.L. 92-500, and

referring any unauthorized dumping of dredged material into ocean waters to the EPA Regional Administrator for possible imposition of civil penalties under Section 105(a), P.L. 92-532 (as well as to the U.S. Attorney and DAEN-GCK); (4) making a finding that the public interest requires processing an after-the-fact authorization for activities (other than discharge of dredged material to navigable waters or dumping of dredged material into ocean waters where such authorizations are specifically prohibited).

The proposed regulations require elements (1) and (4) plus allowing the district engineer to order changes in the work already done if this is necessary to protect the public interest. This procedure implies a site visit; however, we recommend that the regulation specifically require a site inspection by the district engineer or his designee. The "public interest" includes environmental considerations; however, we urge that the authorization to require changes (paragraph (g)(12)(i)) be strengthened by a specific reference to protecting the environment as well as the public interest. Finally, we believe adequate implementation of enforcement responsibilities under P.L. 92-500 and P.L. 92-532 requires the addition of element (3) to the subject paragraph. The COE enforcement regulations which are being revised or development of a procedural memorandum of understanding would allow proper delineation of COE/EPA/State activities to assure communication and avoid duplicative enforcement actions.

As noted earlier, the Administrator's authority described in paragraph (b)(7) and (b)(8) to prohibit activities under certain conditions should be cited.

Paragraph (h)(2):

We believe that the description of the proposed activity should include the entire project of which the proposed activity is a part, including associated land use and long-range plans for the area. This would greatly facilitate agency and public evaluation of the true environmental effects of the activity, and provide information for the analyses noted in paragraph (i)(2). The public notice information pursuant to paragraph (j) should also describe the activity in these broad terms.

Paragraph (j)(1)(iv):

Although most of the public notices we receive include adequate drawings, a number do not. We recommend that a plan and elevation scale drawing be provided in the application rather than a sketch.

Paragraph (j)(1)(vi):

If an environmental impact statement is available, the public notice should state where it may be obtained or examined.

Paragraph (o)(1):

The following sentence should be added at the end of this paragraph: "No modification or alterations will be made to any water quality conditions specified by EPA, regardless of

their apparent significance, without the prior written consent of the appropriate EPA Regional Administrator."

Paragraph (o)(2):

The EPA Regional Administrator and other government agencies which receive copies of permits should be notified of any significant modifications of the terms or conditions of a permit by the district engineer.

Paragraph (q):

The procedures for supervision and enforcement need significant strengthening, in our view. We have already cited the need to reference the Administrator's authority under Section 105(a), P.L. 92-532 and Section 309(a) and (b), P.L. 92-500 in the enforcement regulations (as well as in paragraph (g)(12) of the subject regulations.

In addition, we are particularly concerned that the regulations, either in paragraph (q) or in paragraph (m)(2) regarding permit conditions, fail to specify a requirement for a permittee to monitor the effects of and report on his dredging or disposal operations during and after the period of work. We believe such self evaluation and reporting are key elements in a successful environmental protection program. We understand that monitoring requirements will be incorporated into some permits as a special condition and that these requirements will be based in part on the guidelines and criteria currently being developed by EPA. We would be pleased to work with the Corps in the development of monitoring requirements for various permit situations.

GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE
Washington, D.C. 20230

JUN 28 1973

Brigadier General James L. Kelly, USA
Deputy Director of Civil Works
Department of the Army
Washington, D.C. 20314

Dear General Kelly:

In response to your April 4, 1973, letter to the Secretary of Commerce, we have reviewed the April 2, 1973, revised draft of Section 209.120, "Permits for Activities in Navigable Waters and Ocean Waters," of Title 33, Code of Federal Regulations.

The enclosed comments are intended to supply additional information and provide technical changes in order that the proposed regulations will be compatible with related statutory requirements including the Fish and Wildlife Coordination Act; the Marine Protection, Research, and Sanctuaries Act; and the Coastal Zone Management Act. Subject to the above-mentioned changes, we believe the proposed regulations should achieve the two purposes for revision set forth in your letter of March 1, 1973, to the Secretary of Commerce.

I would like to call your particular attention to the three comments which relate to coordination with the National Marine Fisheries Service (NMFS) under provisions of the Fish and Wildlife Coordination Act; i.e., page 4(c)(5); page 11(g)(4)(ii); and page 28(d)(vii). As presently worded, the draft regulations do not adequately reflect the role of NMFS under the Act and the proposed changes are necessary to correct this shortcoming.

A copy of this letter has been forwarded to the Office of Management and Budget.

Sincerely,

Karl E. Bakke

Karl E. Bakke
Acting General Counsel

Enclosure

Department of Commerce Comments
on the April 2, 1973, Army Corps
of Engineers Dredge and Fill Regulations

p. 3 (c) We believe that the Water Resources Planning Act should be considered along with other related legislation since it provides a mechanism for comprehensive basin-wide analyses of water resources problems and needs.

p. 4 (c)(5) There are a number of other Acts which apply and they should be cited. These include: The Anadromous Fish Conservation Act (16 U.S.C. 757a-757f), The Estuary Protection Act (16 U.S.C. 1221-1226), and The Coastal Zone Management Act of 1972 (P.L. 92-583). Also, since other acts such as The Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa-668-cc-6); The Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and The Marine Protection, Research, and Sanctuaries Act of 1972 (P.L. 92-532), are important, the phrase, "and other Acts." should be inserted after the specific citations.

Also, Reorganization Plan No. 4 transferred Coordination Act responsibilities to the National Marine Fisheries Service and we believe that, as written, the regulation understates NMFS's role under the Act. We firmly recommend that this paragraph be rewritten, as follows:

"(5) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, et seq.), The Migratory Marine Game Fish Act (16 U.S.C. 760c-760g), The Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), The Anadromous Fish Conservation Act (16 U.S.C. 757a-757f), The Estuary Protection Act (16 U.S.C. 1221-1226), and The Coastal Zone Management Act of 1972 (P.L. 92-583), and other acts express the concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement, and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal permits which authorize the control or modification of any body of water must be coordinated with the United States Fish and Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State."

p. 5 (d)(1) and (d)(2) Define the terms "navigable waters of the United States" and the term "navigable waters." The reason for distinguishing between these two terms is not apparent. We would appreciate being advised of the necessity for the two definitions.

p. 7 (f)(1) We suggest that the final two lines of this paragraph be changed to read as follows:

". . . the people and the private interest of individual land owners. No permit will be granted if, after balancing the above factors, its issuance is found not to be in the public interest."

p. 7 (f)(2) In the third line of paragraph (iii), insert "rights, as well as the" between the words "private" and "uses."

p. 8 (g)(i)(a) We recommend in Line 4 that "or rights" be inserted between "property" and "of."

p. 10 (g)(3)(i) While fully recognizing the importance of wetlands, we nonetheless strongly feel that as now drafted the last sentence of this subsection, appearing at Lines 5-8 on page 10, creates an unacceptably strong presumption against their appropriate development. We

suggest that the last sentence be amended to read, as follows:

"As environmentally vital areas, they constitute a productive and valuable public resource, the unnecessary alteration or destruction of which may be contrary to the public interest."

p. 11 (g)(4)(ii) As written, the regulation does not include a statement of policy regarding coordination with the National Marine Fisheries Service under the provisions of the Coordination Act. To correct this oversight, we recommend addition of the following language at the end of (4)(ii):

"Until a similar document is negotiated between the Department of the Army and the Department of Commerce, policies set forth in this existing memorandum of understanding will apply in coordination with the National Marine Fisheries Service."

p. 11 (g)(5)(i) As drafted, this subsection is not limited as to the nature of the "water quality aspects" to be considered. We suggest that the language appearing at Line 8 be amended to read as follows:

"Agency (EPA), advises of other water quality considerations required to be taken into consideration pursuant to the provisions of the Federal Water Pollution Control Act, the Marine Protection, Research and Sanctuaries Act of 1972, or regulations or guidelines issued pursuant to either."

p. 13 (g)(9) The second sentence is not entirely correct since, in reality, the Bureau of Land Management evaluates potential effects in a cooperative manner with other Interior and Federal agencies. We recommend that the phrase "in cooperation with other Federal agencies" be inserted in Line 5 between "that agency" and "fully evaluates."

p. 27 (i)(2)(v) We recommend a new section (v) to accommodate especially valuable areas that are not under a coastal management program and the renumbering of existing (v) as (vi) and continue renumbering in sequence. The proposed new section (v) follows:

"If the activity will be located on or so as to affect adversely a biologically productive wetland, an estuarine or marine sanctuary, a fish and wildlife resource, or the human uses

dependent upon such a wetland, sanctuary, or resource, and such wetland, sanctuary or resource is not subject to or covered by a State coastal management plan, the District Engineer shall advise the applicant that the special considerations set forth in subparagraphs (g)(3) and (g)(4) will be given to the application. The District Engineer shall assure that such consideration is carefully and fully given and shall facilitate the adoption by the applicant of the advice and recommendations made by officials of the responsible Federal and State fish and wildlife agencies, the sanctuary administering agency, and other concerned environmental protection agencies."

p. 27 (i)(2)(v)(a) We recommend the addition of "and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852."

p. 27 (i)(2)(v)(c) We recommend replacement in the first line of the word, "obstructions," with the word, "structures," since fish enhancement devices would very seldom be obstructions. Also, such structures may occur in U.S. coastal waters other than the Atlantic and Gulf coasts. Therefore,

we recommend this sentence be changed to read:

"(c) If the activity involves the construction of structures to enhance fish propagation, to the Director, National Marine Fisheries Service, NOAA, Department of Commerce."

p. 28 (i)(2)(vi)(b) For the same reason as above, change to:

"If the activity involves the construction of structures to enhance fish propagation (artificial reefs) along the coasts of the United States, to the Commander, U.S. Naval Oceanographic Office, Washington, D.C. 20390, and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, and the Director, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, D.C. 20235."

p. 28 (i)(2)(vii) The National Marine Fisheries Service should also receive a copy of the letter of permission. Therefore, the following phrase should be added to the last sentence, ". . . and, where appropriate, the Regional Director, National Marine Fisheries Service."

p. 29 (j)(1)(iii) To enable reviewers to evaluate potential pollution effects, it is often desirable to know the chemical composition of proposed dump or discharge materials. The

term "composition" in Line 4 is too general to be of value in providing information of use in impact analyses. We recommend alteration of the phrase "type composition and quantity of materials" to read "type, quantity, and composition, including, where appropriate, chemical composition, of materials."

p. 29 (j)(1)(iv) The term "sketch" in the first line does not specify the degree of graphic detail needed to facilitate project evaluation. We recommend its replacement with the term, "plan and elevation scale drawing." The sentence would then read: "A plan and elevation scale drawing showing the location . . ."

p. 30 (j)(1)(viii)(a) The criteria for permit evaluation would be enhanced by reference to the topic of coastal zone management plans. Therefore, we recommend insertion of the term, "the relevant provisions of any State or local coastal zone management plans," before the words "economics, aesthetics, etc." in Line 7 of page 30.

p. 30 (j)(1)(viii)(a)(2) In keeping with the intent of this section, the following sentence should be added:

"If the activity involves fish and wildlife resources or uses or the wetlands on which

these resources and uses depend, the public notice will make note that consultation on these matters is required by the Fish and Wildlife Coordination Act as defined in subparagraph (g)(4), above."

p. 33 (m)(3) As presented in the regulations, the letter of permission concept necessitates a large degree of interpretation. Under it, District Engineers would not receive sufficient guidance as to when such a letter should be issued. Therefore, we recommend that this regulation be sufficiently expanded to specify the circumstances under which such a letter would be prepared and include examples of the special circumstances which would result in such a letter.

p. 35 (n)(5) A ten-year authorization period for maintenance dredging is too long. A five-year period would be much more reasonable and we, therefore, recommend that these regulations be changed to reflect this.

p. 40 (5) The list of items to be considered would be enhanced by adding the topic of coastal zone management plans. We recommend that this topic be added as item (s)(7)(xiii) on page 41 and renumbering the present (xiii).

p. 41 (7)(xi) We suggest some elaboration of the concept of "economy" in this context and that the subsection be amended to read, "Economy, including any private rights and ownership involved."

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF INTERSTATE LAND SALES REGISTRATION
WASHINGTON, D.C. 20410

IN REPLY REFER TO:
Heidermann

5 JUN 1973

Major General James L. Kelly
Acting Director of Civil Works
Attention: DAEN-CWO-N
Corps of Engineers
Department of the Army
Forrestal Building
Washington, D.C. 20314

Dear General Kelly:

This Office administers the provisions of the Interstate Land Sales Full Disclosure Act, (15 USC 1701), which went into effect on April 28, 1969. Basically, this Act requires a developer of unimproved lots in a subdivision of 50 lots or more, subject to certain statutory and regulatory exemptions, to file specific information about the subdivision with us prior to engaging in lot sales. Patterned after the Securities Acts of 1933 and 1934, the Interstate Land Sales Full Disclosure Act seeks to achieve full disclosure of the facts about the property by means of a Statement of Record filed with this Office, and a Property Report required to be given by a developer to a purchaser of a lot, prior to signing a purchase agreement. Enclosed is a copy of the Act and current Regulations. Also enclosed is a copy of our Proposed Regulations which are open for comment until June 28, 1973; the original June 15th date having been extended by us. We call your attention to items D and E of Part IV of Proposed Regulation 1710.105 and would appreciate your comments on this part as well as any other provisions you may wish to cover.

We have read your proposed revisions to 33 CFR 209 as published in the May 10, 1973 Federal Register and believe we share a common interest and concern. We request that you include under "Related legislation" in section 209.120(c), the Interstate Land Sales Full Disclosure Act (15 USC 1701) administered by the Office of Interstate Land Sales Registration, Department of Housing and Urban Development. If you so decide, and wish to have any draft language provided, please let us know.

In addition, we request that the Corps of Engineers advise us of any applications for permits in which it appears that the sale of unimproved lots, which might be covered by our Act, is likely to be the end result. We have recently entered into a similar working arrangement with the

Bureau of Sports Fisheries and Wildlife of the Department of the Interior and we look forward to working with your agency. The mailing address would be Administrator, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, HUD Building, Washington D.C. 20410.

Sincerely,

George K. Bernstein
Interstate Land Sales Administrator

By John R. McDowell
Deputy Administrator

Enclosures

TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE
37902

June 12, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Dear Sirs:

This is with reference to the Corps of Engineers' proposed policy, practice, and procedures concerning permits for activities in navigable waters or ocean waters published for comment in the Federal Register of May 10, 1973.

In general, we feel that the regulations are well thought out and workable. We are, however, concerned about the provisions of section 209.120(e)(3) as they now stand. Section 209.120(e)(3) requires that Federal agencies (other than the Corps) obtain permits for activities of the type for which a permit is required if conducted by private parties. To the extent that this section would require TVA to apply for permits under the provisions of the River and Harbor Act of 1899, it is contrary to applicable statutory law.

Section 28 of the TVA Act (48 Stat. 71, 16 U.S.C. § 831aa), as enacted in 1933, repealed all "Acts or parts of Acts in conflict herewith . . . so far as they affect the operations contemplated by this Act." In its recent decision in Morris v. Tennessee Valley Authority, 345 F. Supp. 321 (N.D. Ala. 1972), a copy of which is enclosed, the United States District Court for the Northern District of Alabama specifically held, with reference to the River and Harbor Act of 1899, that:

> Those sections of the Rivers and Harbors Act of 1899 relied on by plaintiff are inapplicable, since TVA admittedly did not deposit the debris of which plaintiff complains into the reservoir.

Moreover, the operation of TVA's dams and reservoirs is exempt from that act. Section 28 of the TVA Act provides:

> All acts or parts of acts in conflict with this chapter are repealed, so far as they affect the operations contemplated by this chapter [16 U.S.C.A. § 831aa/ [p. 324; emphasis added].

The congressional intent to make the operations of TVA free from such requirements is also clearly indicated in section 26a of the TVA Act, which provides that no dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations shall be constructed, operated or maintained in the Tennessee River or its tributaries without approval of the TVA Board. While this provision does not exempt private parties from other laws relative to the creation of obstructions in the Tennessee River and its tributaries, it does exempt TVA. Section 26a provides in part:

> The requirements of this section shall not be construed to be a substitute for the requirements of any other law of the United States or of any State, now in effect or hereafter enacted, but shall be in addition thereto, so that any approval, license, permit, or other sanction now or hereafter required by the provisions of any such law for the construction, operation, or maintenance of any structures whatever, except such as may be constructed, operated, or maintained by the Corporation [TVA], shall be required, notwithstanding the provisions of this section [49 Stat. 1079, 16 U.S.C. § 831y-1; emphasis added].

The question of the applicability of the River and Harbor Act to TVA was the subject of correspondence and meetings in 1971 and 1972 between TVA and the Corps with specific reference to the applicability

Office of the Chief of Engineers June 12, 1973

to TVA of the then existing Refuse Act permit program. As a result of these discussions it was concluded that TVA, in lieu of signing permit applications, would furnish to the respective district engineers all information required by the Refuse Act permit program form. A copy of a letter dated January 13, 1972, from Mr. E. Manning Seltzer, the Corps' General Counsel, to TVA's General Counsel confirming these arrangements is enclosed. Insofar as the proposed permit program under the River and Harbor Act of 1899 is concerned, TVA would plan to continue the practice agreed upon with your General Counsel of furnishing the Corps with the information called for on your regular permit application forms. We recognize, of course, that TVA is subject to the permit requirements of section 404 of the Federal Water Pollution Control Act, as amended, and will, to the extent required, apply for needed permits in the manner provided for other Federal agencies.

In order to clarify the proposed regulations concerning this matter, we suggest the addition of the following provision at the end of the first sentence of section 209.120(e)(3):

> provided, however, that the Tennessee Valley Authority shall not be required to apply for or receive any permit or authorization under the Act of March 3, 1899.

We appreciate the opportunity to comment on the proposed procedures.

Sincerely yours,

Lynn Seeber

Lynn Seeber
General Manager

Enclosures

20-733 O - 73 - pt. 1A - 45

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS:
U.S. COAST GUARD (GWS/83)
400 SEVENTH STREET S.W.
WASHINGTON, D.C. 20590
PHONE: 202 426-2262

18 JUN 1973

Brigadier General James L. Kelly
Deputy Director of Civil Works
Office of the Chief of Engineers
Department of the Army
Washington, D. C. 20314

Dear General Kelly:

Recently this office had the opportunity to review in the Federal Register of 10 May 1973, Vol. 38, No. 90, your revised Section 209.120 - Permits for Activities in Navigable Waters and Ocean Waters, of Title 33, Code of Federal Regulations.

The following represent comments from the Office of Marine Environment and Systems of the U. S. Coast Guard and do not reflect all the views and/or comments of this service since you may be receiving other comments from separate offices:

a. The proposed wording of 33 CFR 209.120(g)(8) is not objectionable to the Coast Guard but wording similar to that used in the draft of 27 February 1973 would be preferable. The minor changes proposed would inform the public of a legal responsibility to obtain Coast Guard authorization for aids to navigation rather than simply acknowledging a "particular interest" on the part of the Coast Guard.

b. The standard condition requiring display of lights and signals as prescribed by the Coast Guard (§209.130(c)(2)(viii)) would be removed from the regulations. We have no objection to this but reaffirm our desire that this condition remain on ENG FORM 1721.

c. Deletion of §209.130(p) would abruptly terminate detailed federal regulations regarding the lighting of fishing structures and appliances. While regulations for specific geographic areas (Part 206) would remain in effect, prescription of lighting requirements in other areas would require individual action by the Corps of Engineers or Coast Guard in each

case. If it is the intent of the Corps of Engineers to terminate its practice of prescribing lights for fishing structures and appliances, it is requested that the existing lighting regulations be continued in effect until the Coast Guard is able to effect its own regulatory procedures in this area.

d. Paragraph (i)(2)(vi) of the proposal states, "Copies of permits will be furnished to other agencies in appropriate cases as follows: . . ." Four cases are described in subparagraphs (a)-(d) and "The appropriate District Commander, U. S. Coast Guard" is named under subparagraph (d). Since permits issued under subparagraphs (a), (b) and (c) are of equal importance to District Commanders as those issued under (d), in that they provide advance information relative to matters under Coast Guard jurisdiction, it is recommended that the "Appropriate District Commander, U. S. Coast Guard" also be included under Subparagraphs (a), (b) and (c) of paragraph (i)(2)(vi).

It is requested that the proposed regulation changes be corrected accordingly and the undersigned would be pleased to receive four copies of the regulations in their final form.

Sincerely,

J. D. McCANN
Captain, U. S. Coast Guard
Acting Chief, Office of Marine
Environment and Systems

Western Union Telegram

1973 JUN 11 PM 10:48

LLE133 WAC230(1901)(2-052821E162)PD 06/11/73 1901
ICS IPMRNCZ CSP
5033783109 TDRN SALEM OR 108 06-11 0701P EST
PMS OFFICE CHIEF OF ENGINEERS, DLR
ATTN DAEN-CWO-N FORRESTAL BLDG
WASHINGTON DC 20314
COMMENTS ON PROPOSED REVISION TO REGULATIONS 33 CFR 209.120-PERMITS FOR ACTIVITIES IN NAVIGABLE WATERS AND OCEAN WATERS. STATE OF OREGON AGENCIES HAVE HAD A BRIEF OPPORTUNITY TO REVIEW THE PROPOSED REVISIONS TO ARMY PERMIT REGULATIONS AND THE COMMENTS ON THE REVISIONS BY THE PORTLAND DISTRICT ENGINEER. I CONCUR WITH THE DISTRICT ENGINEERS COMMENTS AND PARTICULARY THOSE (D) (2) DEALING WITH THE ENLARGED DEFINITION OF NAVIGABLE WATER. THE REQUIREMENT FOR PERMITS ON STREAMS TRIBUTARY TO NAVIGABLE STREAMS WOULD CONFLICT WITH OREGON LAW, CREATE DELAYS AND ENGENDER CONFUSION. I RESPECTFULLY REQUEST A TWO WEEK EXTENSION OF TIME TO MAKE

SF-1201 (REV-64)

MORE SPECIFIC AND DETAILED COMMENTS.
KESSLER R CANNON ASSISTANT TO THE GOVERNOR NATURAL RESOURCES

Telegram

1973 JUN 11 PM 7:43

LLC099 WAC185(1607)(2-044262E162)PD 06/11/73 1549
ICS IPMBNGZ CSP
9044883414 TDBN TALLAHASSEE FL 159 06-11 0349P EST
PMS OFFICE OF CHIEF OF ENGINEERS, FONE
ATTN DAEN-CWO-N FORRESTAL BLDG
WASHINGTON DC 20314
YOUR PROPOSED REGULATIONS GOVERNING DREDGE AND FILL PROJECTS ARE NOT CLEAR AS TO WHEN A STATE CERTIFICATION IS NECESSARY. THEY SHOULD PROVIDE THAT NO FEDERAL PERMIT CAN BE ISSUED WITHOUT A STATE CERTIFICATION FOR THE ACTIVITY WITHIN THE AFFECTED STATE. BY IMPLICATION YOU NOW LEAVE OUT THE CERTIFICATION ON 17 NUMBERS OF 18 "POLICIES ON PARTICULAR FACTORS OF CONSIDERATION," SECTION 209.120 (G). YOU ALSO OMITT THE STATE CERTIFICATION IN AFTER THE FACT PERMITS.
IT IS ALSO UNCLEAR IN YOUR REGULATIONS, WHETHER OR NOT A PERMIT MAY BE ISSUED BY THE CORPS IF CERTIFICATION IS DENIED BY THE

F-201 (RS-69)

STATE WATER POLLUTION CONTROL AGENCY. PL 92-500 PROVIDES NO LICENSE OR PERMIT MAY BE GRANTED IF CERTIFICATION IS DENIED BY THE STATE.
AS A POLICY MATTER WE RECOMMEND THAT IN THE BALANCING TEST SET OUT IN (F), GREATER WEIGHT BE GIVEN TO THE PUBLIC INTEREST AND THE PROTECTION OF RESOURCES THAN TO THE PRIVATE BENEFIT OR UTILIZATION OF THE RESOURCES
HAMILTON S OVEN, JR. ATTORNEY ENVIRONMENTAL LAW STATION

OFFICES OF

FRANCIS B. BURCH
ATTORNEY GENERAL

J. MICHAEL McWILLIAMS
ASSISTANT ATTORNEY GENERAL
Counsel to the
Department of Transportation
RANDY H. LEE
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL
Department of Transportation
MARYLAND PORT ADMINISTRATION
19 South Charles Street
Baltimore, Maryland 21201
301/383-6333

June 5, 1973

William N. Hedeman, Jr., Esquire
Assistant General Counsel
U.S. Army Corps of Engineers
c/o Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Re: Proposed Policy, Practice and Procedure;
Permits for Activities in Navigable Waters
or Ocean Waters

38 Fed. Reg. 12217-12230 (May 10, 1973)

Dear Mr. Hedeman:

It has been some time since you spoke to us in Baltimore on May 8, where I learned for the first time of the broad new regulations proposed by the Corps. I took your warning to heart, and watched for the proposed rulemaking to appear; I have supplied copies of the same to our planning and engineering people, both at the Maryland Port Administration and at the Maryland Department of Transportation. I am hopeful that this will result in the submission of significant and meaningful comments on or before the June 11 comment date.

You will recall that in your address here on May 8, you made reference to a distinction between "the navigable waters of the United States" and "navigable waters" generally. I understood the import of your distinction to be that in the past the Corps had been content to confine the exercise of its regulatory and permit authority to the former, whereas the proposed rulemaking represented a desertion of the prior perimeter and a striking out into the latter, far greater area--as in the Wetlands permit system proposed. You mentioned that the Corps located the source of this never-before-exercised power to go beyond the "navigable waters of the U.S." into the "navigable waters," in the 1899 Act. There was also a mention of something that happened on September 9, 1972. It is

upon these two things that I want to request your advice.

You may recall that in the Q and A session in Baltimore I asked you about the effect of a Congressional declaration, by Public Law, of a part of a body of water out of the navigable waters of the United States. The specific problem is this: In Baltimore, what is known as the "Inner Harbor" is the Northwest Branch of the Patapsco River. It is unquestionably commercially navigable, in the non-legal sense. However, in the late '60's (1968 I believe), the Congress passed a law declaring the uppermost reaches of the Northwest Branch (the Inner Harbor) out of the navigable waters ("...of the United States"?). This was done, I understand, in order to facilitate an ongoing "new downtown" urban renewal project, which had mammoth federal participation by HUD, and which called for considerable dredging in the Northwest Branch in connection with the creation of very attractive new basin-perimeter bulkheading and public open-space strolling grounds; additionally, at least one major structure of the proposed project (administered by the Baltimore City Department of Housing and Community Development, through Charles Center-Inner Harbor Management Company, Inc, on behalf of the Mayor & City Council of Baltimore) was planned to be constructed as a part of the new bulkheading, rising out of it. By the removal of the Northwest Branch from navigability by operation of law, there resulted the relief from the necessity for Army Corps permits with respect to the dredging and bulkheading work that might otherwise have been required--even though everyone recognized that if the dredge spoil were to be deposited in any water outside of the portion of the Northwest Branch designated in the statute, a dump or fill permit would still be required. In light of the later passage of the National Environmental Policy Act of 1969, effective January 1, 1970, and the view of that statute's meaning and breadth that seems universally to have been accepted by the federal courts, I think it is clearly proper to say that the congressional action respecting the Northwest Branch may result in the avoidance of what might have been up to a three year administrative delay in the completion timetable and a possibility of total project frustration.

My concern is that the same delay and potential frustration may yet be visited upon the community of Baltimore generally, and upon those involved in the individual projects in the Inner Harbor--such as the Maryland Port Administration of the Department of Transportation--as well. The definitions section of the proposed rulemaking, at Section 209.120(d)(1), defines navigable waters of the United States to include those waters "which have been in the past, or may be in the future susceptible for use for purpose of interstate or foreign commerce" or which "presently are" so susceptible, and refers to certain further definitional materials of September 9 and 16, 1972. The term navigable waters is next defined, at Section 209.120 (d)(2), as meaning "the waters of the United States." All of this leads one to conclude that there is a difference between (1)"navigable waters of the United States" and (2) "the waters of the United States;" if this be true, then the question becomes whether these are mutually exclusive classifications or

whether one is greater than, but includes, the other. In other words, given body of water A, a river (or a branch or cul de sac thereof) affected by the tide, must it be either (1) or (2) above, or could it be both (1) and (2)? And, for the big question, what is the effect of congressional action such as we have had as to the Northwest Branch, which happens to be a "body of water A" as described hereinabove, upon classification in either or both of those pivotal terms for purposes of your proposed rulemaking. As I read 38FR 12217-12230, inclusive, this problem is not addressed and the question is thus unanswered. I am assuming you can quickly and easily find the Public Law, as codified, to which I make reference respecting the Northwest Branch. I found it once in U.S.C.A., but did not make a notation of the citation. A further question is, if (1) and (2) above are not mutually exclusive--if any body of water A can be both (1) and (2)--which of the classifications is the larger, which one includes, but is greater than, the other?

Still another problem is the effective date of the regulations, and their relationship to "ongoing" projects not previously regulated by Army Corps permit systems; your entire rulemaking is silent on that point. What does the Corps intend?

My final question to you is whether the unidentified event of September 9, 1972, mentioned in your address in Baltimore, is the insertion in the Federal Register of that date, at 37 F.R. 18289; if so, then what is the item you referred to as "the Georgia case" in your remarks--for I somehow got the idea that it was this "Georgia case" (as to whicha citation could not be supplied) which was the mystery event of September 9.

Also, I would appreciate your advice as to whether the comment deadline on your proposed rulemaking is still June 11, or whether that has been extended. One further technical, administrative question--have the appendices, referred to in 209.120 (e) (1) and 209.120 (g) (4) (ii) and 209.120 (m)(1), yet been published? If so, I would appreciate a reference as I have missed them. I would hope that they would be planned for publication well in advance of the comment cutoff date, and therefore assume that I have simply not picked them up in reviewing the Federal Register.

I will look forward to your response.

Very sincerely yours,

Randy H. Lee
Assistant Attorney General

RHL:cra

MARYLAND ENVIRONMENTAL TRUST
8 E. Mulberry Street, Baltimore, Maryland 21202
Environment - the trust — Man - the trustee
PAUL ALLEN, *Director*
Telephone 383-4264

...RIGHT
...R. ANDERSON
...asurer
...ARGARET ROSCH JONES
Administrative Assistant

June 13, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Re: PERMITS FOR ACTIVITIES IN NAVIGABLE WATERS, Proposed Policy, Practice, and Procedure

Gentlemen:

The Maryland Environmental Trust, a quasi-public agency of the Maryland Department of Natural Resources, would like to take this opportunity to endorse the proposed regulations governing activities in navigable waters (33 CFR Part 209). We specifically address those portions of the regulations pertaining to General Policy and the specific policy as it pertains to the Effect on Wetlands.

(1) General Policy

We favor those portions of the general policy statement which mandate consideration of environmental factors in the permit decision making process. Specifically, need, benefits/detriments, and alternatives should clearly be considered. However, (f)(2)(iv), the cumulative effect provision, we believe should be strengthened. That provision, noting that "The probable impact of each proposal in relation to the cumulative effect created by other structures or work in the general area" should make clear that the cumulative effect should also be considered even where structures are not in the general area but where there would still be an ancillary cumulative effect. For example, structures may not be in the general area but, with the proposed structure, the cumulative effect, especially when viewed in a regional or watershed context, may be particularly deleterious. Therefore, "general area" should be modified so that it means "geographical" as well as a general area within the context of an ecological unit.

(2) Policies on particular factors of consideration: effect on wetlands.

Again, we endorse the injection of important environmental

and ecological factors into the decision making process as regards permits which may impinge upon wetland integrity.

We believe that the definition of those wetlands as being important to the public interest is sound.

We thoroughly endorse that portion of (g)(3)(iii) which notes that particular applications will be evaluated with the recognition that the wetland is a part of a complete and interrelated wetland area.

We submit, however, that (g)(3)(iv) is insufficiently precise as to the consideration of ecological integrity. The benefit/detriment balancing, within the context of the general policy, is sound. However, (a), which notes that the District Engineer should primarily consider whether the proposed activity is dependent upon the wetland resources and whether feasible alternative sites are available, should make clear that the dependency should be absolute and that, only then, would the permit be granted. Clearly the intent is, and should be, to proscribe activities impinging upon wetland integrity unless those activities can be conducted in no other way than by disrupting the wetland area. Additionally, of course, if the activity does not depend upon the wetland resource, it should be proscribed.

With the aforementioned caveats, the Environmental Trust applauds the Corps efforts on the proposed rules.

Thank you very much for the opportunity to comment.

Sincerely,

Paul Allen
Director

PA:MCC

Maryland Department of Transportation
Office of the Secretary

Marvin Mandel
Governor
Harry R. Hughes
Secretary

June 11, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314
ATTENTION: DAEN-CWO-N

Gentlemen:

This letter contains comments on your "proposed permits for activities in navigable waters or ocean waters, proposed policy, practice, and procedures" as contained in the Federal Register, Volume 38, No. 90-Thursday, May 10, 1973, pages 12217 through 12230. The first section of the proposed regulations is an excellent, concise compilation of the laws relating to navigable waters of the United States. There is also an attempt to establish guidelines which, for the first time, will set maximum time limits for the review process. A shortcoming of this portion of the regulations is that they do not go far enough. It is our recommendation that a model sequence time schedule for each review procedure be established with a maximum allowable time frame of six (6) months for the entire process.

It greatly concerns us when Federal regulations are not uniformly applied to all areas of the United States. Recently, for example, the United States Department of Interior has required the Maryland Port Administration to prepare a Master Plan for land use in Baltimore Harbor before any additional permits for dredging and filling are approved. We are apparently the only port of substantial size in the nation having to comply with this Federal agency requirement. Similarly, an inconsistancy exists in United States Army Corps of Engineers practices regarding the containment of spoil material. In certain areas the Corps assumes responsibility for construction, operation, and maintenance, while in other areas this major financial responsibility is under State jurisdiction. We are suggesting an end to present inequities to insure that equal treatment be given to all United States Port complexes. We recommend that the United States Army Corps of Engineers set up an office of uniform procedures to maintain a general permit process noted in the proposed regulations to insure that all ports are subjected to equal requirements.

The State of Maryland and indeed the United States is fortunat in having the excellent port community located in Baltimore. We feel that development of port oriented industry and facilities in this area is both economical, in conformance with State, local and regional policies and environmentally compatible. According to imminent Chesapeake Bay scientists, the Baltimore Harbor has not been a valuable spawning area or wildlife habitat for fifty (50) years, but unlike many major harbors, the tidal Patapsco River which forms the Baltimore Harbor is not biologically dead. During this time period, the Chesapeake Bay has been productive and has maintained its health and integrity.

The concentration of the port community in this protected harbo served by utilities including sewer, has been a significant influenc on maintaining the quality of the Chesapeake Bay.

Our specific comments follow with reference made in the left hand column to paragraph, subsection and page in the Federal Register.

Sincerely,

Harry R. Hughes
Secretary

HRH/djl

Comments

1,f
Page 12219

Under relevant factors to be considered in evaluation of a permit application f(1), several factors are mentioned. Only one of these factors, economics, deals with the advantages of Port development and the use of the term economics might be considered to mean the cost of the proposal and alternatives, rather than its broad developmental advantages. It would appear that the thirteen criteria noted could be combined into three general factors to provide a better balance of concerns. At present, your check list includes natural and environmental concerns, general environmental (vague) fish and wildlife values, water quality and recreation of five of the thirteen items. In addition, historic values, land use classification (vague), the needs and welfare of the people and esthetics represent social concerns. Economic concerns are represented only once which we feel is inadequate especially in regard to the general balancing process noted in Federal Regulation ER 1105-2-105 in which economic, social and environmental guidelines were issued. It is suggested, then, that these three criteria be used with the present criteria as sub-elements of each. This might result in the following:

Economic - Including development, navigation, investment, employment, etc.

Social - Including esthetics, historic values, land use classification, water supply, flood damage prevention, needs and welfare of people.

Environmental - Including conservation, fish and wildlife, recreational, water quality.

Using these three factors rather than the proposed thirteen would make for a more balanced evaluation and seemingly easier evaluation effort by the U. S. Army Corps of Engineers.

ii, 2, fi
Page 12219

This requirement should be applied nationally.

iii, 2, f
Page 12219

The private sector cannot be expected to hold land for public use. The way to protect land for public use is through the acquisition process.

	Comment
g ~~ge~~ 12220	Define "regular intervals."
i, 3, g Page 12220	This section discusses the value of wetlands but no where in the discussion is a recognition that wetlands have differing values and those in harbor areas like Baltimore often have been greatly modified and as such are not biologically productive.
ii, 4, g Page 12220	Reference is made to memorandum of understanding between the Departments of Army and Interior in an Appendix B. This is not available for comment and is yet an intricate part of the attached rules and regulations.
IV, 7 Page 12223	Define "economically feasible" and limit the geographic area in which alternatives are considered.
iii, 18, h Page 12224	Does this mean that structures constructed on fill or pile platforms need to be approved after construction is complete?
3, 18, h Page 12224	Preparation of environmental impact information by the Port Administration will require additional manpower and other resources. The required information and/or guidelines should be specific.
i, 4, h Page 12224	The time frame associated with this requirement should be stated and the term "local" newspaper defined.
iii, 4, h Page 12224	The delay of a project can be extremely expensive becaus of increasing construction cost. A time deadline should be established and strictly followed. Consideration should be given to reimbursement by Federal agencies for delaying projects beyond a reasonable time limit.
IV, (4), h Page 12224	There need to be time limits for preparation and submission of the environmental impact statement.
IV, 4, h Page 12225	There is no time specified under this sub-paragraph.
VIII, 4, h Page 12225	This list of projects should include the data of projec submission and a chronology of projects. If the permit is denied, the District Engineer should certify that the denial is in accordance with uniform policies applied throughout the country.

June 1, 1973

Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Dear Sir:

We received, from the Ohio Department of Natural Resources, a copy of your "Notice of Proposed Rule Making" in regard to Section 10 Permits. Since the Environmental Assessment Section of the Ohio Environmental Protection Agency's Division of Planning reviews these permit requests for the purpose of water quality certification, the Ohio Department of Natural Resources felt we should be afforded review on the proposed rules.

We are pleased to see your effort toward making the review process on Section 10 Permits more meaningful. We will appreciate inclusion in the public notice of the expected use of the proposed facility. This would require a more detailed description that what we are accustomed to receiving. For instance, if a proposed dock is in fact to be a loading facility, we need to know that in addition to what will be loaded. The impacts of coal-loading and of limestone-loading are quite different and must be assessed accordingly.

A statement indicating consideration of the need for an environmental impact statement is an appropriate addition. Will the Corps District Offices be provided with the criteria to be used and the threshold levels of those criteria? Moreover, will the states be similarly informed? Consideration should also be given to establishing criteria and thresholds for evaluation of the Section 10 and, following a decision that

a close review was needed, an environmental assessment should be prepared to accompany the Public Notice. Based upon comments received on the Section 10 request and the accompanying environmental assessment, the District Office may then find no need for an Environmental Impact Statement or would have some base information to build on should the decision be made to write a formal statement.

As stated in (j) (1) "the public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought..." To effect a concerted attempt at notifying interested parties; e.g., Sierra Clubs, League of Women Voters, wildlife groups, etc.; we suggest compilation by the District Office of a list of citizen action groups in this area of jurisdiction. Such a list may already exist in a State agency or an umbrella organization at the state level and could be employed to notify a variety of organizations. The news media should continue to be used as a means of notification.

Since the public notice is also the "primary method of... soliciting comments and information necessary to evaluate the probable impact on the public interest" (j) (1), a more "reasonable period of time" (j) (viii) than fifteen days should be permitted for response - more reasonable for the uninformed citizen to become informed of the proposed project to do a responsible job of looking at the effects of the project, and to get a comment in the mail to the Corps District Office. Additionally, a mechanism by which a reviewing agency can request an extension of the review period would be helpful. Such a request might be made when preliminary consideration of the public notice indicates that there is some question about the project, but the agency will need additional time to collect sufficient information to allow a decision to be reached. Such a mechanism might be as simple as honoring a telephone call.

The statement in (j) (ix) (b) raises a question regarding jurisdiction over land under lease from a federal agency. What voice will the Department of the Interior, in this case, have?

In determining whether to grant water quality certification, the Ohio EPA has indicated to the five District Offices covering Ohio our need for the following information. We would propose a uniform requirement for provision of this type of information if anyone is to undertake a meaningful review.

1. Exact positioning of the facility concerning its proximity to rivers and streams, water intakes, and effluent structures, i.e., surrounding land use.

2. Exact location of the disposal site when dredged spoil is determined to be polluted.

3. Type of equipment to be installed at the facility.

4. Exact location in reference to recreational and commercial navigation.

5. Provide information on the sources of material employed in the construction of the facility pertaining to pilings, fill in material, etc.

On a broader scale, we are concerned about the fractionated approach taken on the Section 10 Permit Program. We feel that no one is looking beyond each individual project to the broad repercussions of such undertakings. While a particular project along a lakefront may serve to protect that parcel of land from flooding and erosion, it may be creating increased erosion problems for a neighbor. Moreover, consider the number of such projects in effect at one time, and the magnitude of the problem becomes evident.

Since the passage of the Magnuson Coastal Zone Management Act of 1972, every affected State must now undertake a coastal zone or shoreline management program. If the Federal and State programs are to be complementary, a broader approach must be taken by the Corps of Engineers. Detailed information, indication of surrounding land use, etc. would provide us with the necessary information for a meaningful review of the Section 10 Permit requests individually and of the relation of each project to the shoreline management goals. Someone at the Federal level should be putting the program into perspective.

We would hope that these comments would be reviewed and given consideration in the finalization of rule making on the Section 10 Permit Program.

Very truly yours,

Norma J. Weisner

Norma J. Weisner
Assistant Division Chief
Environmental Assessment Section

NJW/jt

cc: R. Lucas, Corps Liaison, Ohio Department of Natural Resources

20-733 O - 73 - pt. 1A - 46

CALIFORNIA LAND TITLE ASSOCIATION
P. O. BOX 128 • SACRAMENTO, CALIFORNIA 95801 • (916) 444-2647

June 20, 1973

Office of the Chief of Engineers
Forestal Building
Washington, D.C. 20314

Re: Proposed Policy, Practice and Procedure of the Corps of Engineers Department of the Army Relative to Permits for Activities in Navigable Waters or Ocean Waters (33 CFR 209) Published in The Federal Register of May 10, 1973, Vol. 38, No. 90

Attention: DAEN - CWO - N

Gentlemen:

The California Land Title Association is a trade organization representing practically all of the title insurance companies and agents operating in the State of California. For your reference I am enclosing the 1972-1973 Directory of the California Land Title Association which sets forth the name and address of each member company which includes an alphabetical listing of regular members beginning at page 44 and associate members beginning at page 49.

By direction of the Executive Committee of the California Land Title Association I write this letter on behalf of the Association to express its concern and opposition to the Proposed Policy, Practice, and Procedure as set forth in the Federal Register of May 10, 1973 referred to above. For the sake of brevity, the California Land Title Association hereby adopts the comments in opposition to the said Proposed Policy, Practice and Procedure by Thomas E. McKnight, Vice President, Title Insurance and Trust Company and Pioneer National Title Insurance Company as contained in his letter addressed as above and dated June 8, 1973, a copy of which letter is attached hereto and incorporated herein by this reference.

Respectfully submitted,

Allen C. McGurk
President

ACM
mo
encl

PRIORITY ********** * U N C L A S S I F I E D * **********

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PMS OFFICE OF THE CHIEF OF ENGINEERS
FORRESTAL BLDG
WASHINGTON DC 20314

ATTENTION: DAEN-CWO-N

GENTLEMAN:
THE PURPOSE OF THIS LETTER IS TO SUBMIT COMMENTS ON SUBSECTION 209.120(1)(3)(II) OF "PROPOSED POLICY, PRACTICE, AND PROCEDURE" FOR "PERMITS FOR ACTIVITIES IN NAVIGABLE WATERS OR OCEAN WATERS" WHICH WAS PRINTED IN THE FEDERAL REGISTER FOR MAY 10, 1973. THE NATIONAL ASSOCIATION OF MANUFACTURERS REPRESENTS THOUSANDS OF COMPANIES WHICH CONDUCT ACTIVITIES IN NAVIGABLE WATERS OR OCEAN WATERS.
SUBSECTION 209.120(1)(3)(II) DISCUSSES THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT WHICH MAY BE REQUIRED IN CONNECTION WITH AN APPLICATION FOR PERMITS AUTHORIZING STRUCTURES AND WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES, THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS, AND THE TRANSPORTATION OF DREDGED MATERIAL FOR THE PURPOSE OF DUMPING IT INTO OCEAN WATERS.
THIS SUBSECTION PROVIDES THAT "THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT IS OFTEN SOMEWHAT DIFFERENT FROM THAT OF THE LAWS UNDER WHICH THE ACTIVITIES MAY BE AUTHORIZED. THUS, AN AUTHORIZATION MAY BE ONLY FOR A PART OF A MUCH LARGER AND MORE COMPLEX OPERATION OR DEVELOPMENT OVER WHICH FEW REGULATORY CONTROLS EXIST. IN SUCH CASES, THE RANGE OF FACTORS TO BE DISCUSSED IN THE ENVIRONMENTAL IMPACT STATEMENT MAY OF NECESSITY BE EXPANDED TO INCLUDE FACTORS WHICH ARE BEYOND THE NORMAL SCOPE OF THE LAW ON WHICH THE AUTHORIZATION DEPENDS."
WE STRONGLY URGE THE DELETION OF THIS SUBSECTION ON THE GROUNDS THAT IT SETS FORTH INTERPRETATIONS COMPLETELY LACKING IN ANY STATUTORY BASIS. THE LANGUAGE ITSELF CONCEDES THIS BY REFERENCE TO AN "OPERATION OR DEVELOPMENT OVER WHICH FEW REGULATORY CONTROLS EXIST" AND BY REFERENCE TO "FACTORS WHICH ARE BEYOND THE NORMAL SCOPE OF THE LAW ON WHICH THE AUTHORIZATION DEPENDS."
THE SUBSECTION APPEARS TO BE A "BOOTSTRAP" OPERATION TO EXPAND

PRIORITY ********** * U N C L A S S I F I E D * **********

PRIORITY ********** UNCLASSIFIED **********

THE FUNCTION OF THE CORPS OF ENGINEERS BEYOND THE MATTERS WHICH IT IS SPECIFICALLY AUTHORIZED BY CONGRESS TO DEAL WITH. THE CONGRESS HAS DELIBERATELY, OVER MANY YEARS, MADE THE DECISION NOT TO REGULATE CERTAIN ASPECTS OF PRIVATE ENTERPRISE. THE CONGRESS HAS CONSISTENTLY REFRAINED FROM ADOPTING LEGISLATION WHICH WOULD CONTROL MANUFACTURING PLANT SITE LOCATION DECISIONS. EVEN THE LAND USE PLANNING LEGISLATION WHICH IT IS CURRENTLY CONSIDERING WOULD LEAVE THE LAND USE PLANNING FUNCTION TO THE STATES. THE EFFORT, THROUGH THIS SUBSECTION, TO EXTEND THE CORPS OF ENGINEERS JURISDICTION BY REGULATION IS REALLY AN EFFORT TO LEGISLATE BY THE EXECUTIVE BRANCH AND SHOULD BE AVOIDED.
THERE HAVE BEEN MANY LAWSUITS BROUGHT ON THE GROUNDS OF ALLEGED INADEQUACY OF ENVIRONMENTAL IMPACT STATEMENTS PREPARED IN CONNECTION WITH APPLICATIONS FOR FEDERAL PERMITS FOR PRIVATE ANTERPRISE PROJECTS. VERY SUBSTANTIAL DELAYS IN SUCH PROJECTS HAVE RESULTED. AN ATTEMPT TO ENLARGE THE SCOPE OF SUCH STATEMENTS TO INCLUDE "FACTORS WHICH ARE BEYOND THE NORMAL SCOPE OF THE LAW ON WHICH THE AUTHORIZATION DEPENDS" WOULD ONLY INCREASE THE VULNERABILITY OF SUCH STATEMENTS TO COURT PROCEEDINGS AND PROTRACTED DELAYS. THE EXTENT OF THE POTENTIAL IMPACT ON THE AMERICAN ECONOMY MIGHT BE NOTED BY THE FACT THAT COMMERCIAL TRAFFIC ON THE INLAND WATERWAY SYSTEM IN 1970, ACCORDING TO THE NATIONAL WATER COMMISSION, TOTALED 204 BILLION TON-MILES, MORE THAN FOUR TIMES THE TON-MILES ON THE INLAND WATERWAYS IN 1950.
THEREFORE, THIS SUBSECTION, WHICH WOULD AUTHORIZE THE CORPS OF ENGINEERS TO DELVE INTO MANY FACTORS OTHER THAN THOSE INVOLVING THE PARTICULAR STRUCTURE OR ACTIVITY EMBRACED BY THE PERMIT APPLICATION, IS COMPLETELY UNWARRANTED, AND COULD HAVE ADVERSE EFFECTS ON THE ENTIRE ECONOMY THROUGH EXTENDED DELAYS IN ACCOMPLISHING ESSENTIAL INDUSTRIAL OBJECTIVES.
WE THEREFORE STRONGLY URGE ITS DELETION.
RESPECTFULLY SUBMITTED
DANIEL W CANNON
BT
#6607

NNNN

PRIORITY ********** UNCLASSIFIED **********

Standard Oil Company of California
225 Bush Street, San Francisco, California 94120

E. O. Kane
Vice-President

June 11, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Attention: DAEN-CWO-N

Gentlemen:

One of Standard Oil Company of California's field operating units has raised a question in connection with your recently published proposed regulations 33CFR209 which we feel is worth passing along to you.

Section 209.120(g)(8) discusses placing navigational aids. No comment is made about removal of such aids. Should this be clarified, or is this a matter in which the Corps is not concerned?

We would appreciate your consideration of the question.

Sincerely yours,

E D Kane

Standard Oil Company of California
225 Bush Street, San Francisco, California 94120

E. D. Kane
Vice - President

June 8, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention DAEN-CWO-N

Gentlemen:

Responding to your publication in the Federal Register of May 10, 1973, Vol. 38 No. 90, Standard Oil Company of California offers the following comments on your proposed regulations 33 CFR 209 printed therein:

1. Section 209.120(i)(2)(ii) appears to give the State agency up to six months in which to concur with or object to the applicant's certification that the proposed activity will comply with the State's coastal zone management program. In our view, this is an unconscionable length of time and should be amended to read "within a reasonable period of time, not to exceed 60 days."

2. It appears to us from 209.120 (i)(2)(i) that these regulations contemplate issuance of public notice by the district engineer pending concurrence with the applicant's certification by the State agency. We think, however, that this should be spelled out to avoid any suggestion that State concurrence with the certification is a pre-requisite to public notice.

3. As discussed in Section e, 3, ii (pg. 12219) much of the reference legislation reserves final approval authority for the Chief of Engineers. The District and Division Engineers are only delegated to issue permits where there is no opposition or controversy. Otherwise the matter is to be referred to the Chief of Engineers. The Chief is then to resolve the matter by himself, or in consultation with other governmental units. Per section f, 1, this decision is to be based on "an evaluation of the probable impact....and its intended use on the public interest." We find no reference that gives the applicant any standing or participation in this decision making process. Since this is clearly a subjective finding, participation by the applicant would be desirable.

Situations where this might be important can be found in Section G (5) "Water Quality" (pg. 12220). In this section the District Engineer can issue a permit after certification by appropriate groups, unless the EPA Regional Administrator objects. If the problem cannot be resolved by the District Engineer, the EPA, and the applicant, it is to be referred to the Chief of Engineers for further action with the EPA. At this point the applicant is clearly left out.

The same basic situation is repeated in Section G (17)(iv) "Dredge Spoils" (p. 12223) regarding disposition of dredge spoils.

Section P (p. 12229) "Authority" discusses authority of District and Division Engineers. However, it further states that the Division Engineers shall refer to the Chief of Engineers any cases in which 1) there are unresolved objections from other federal agencies, 2) the recommendation is contrary to the position of the Governor of the affected state, or any member of Congress and 3) any party to a public hearing has filed an appeal of the decision. Under this provision we could expect anything remotely controversial to be referred to the Chief of Engineers.

Where, as in 209.120(g)(5)(iii) and 209.120 P (1) and (2) provision is made for the District Engineer to forward material for action and decision to higher authority, provision should be included for informing the applicant so he may be involved in action by the higher authorities.

We appreciate the opportunity to comment on these proposed regulations.

Sincerely yours,

T. D. Kane

DEBEVOISE & LIBERMAN
SHOREHAM BUILDING
WASHINGTON, D.C. 20005

TELEPHONE (202) 393-2080

JAMES B. LIBERMAN
THOMAS M. DEBEVOISE
MILAN C. MISKOVSKY
GEORGE F. BRUDER
WILLIAM J. MADDEN, JR.
JEROME C. MUYS

ALBERT R. SIMONDS, JR.
CARMEN L. GENTILE
JOHN P. PROCTOR
PAUL T. NOWAK, JR.
DONALD B. MYERS

June 12, 1973

Office of Chief of Engineers
United States Army Corps of Engineers
Forestall Building
Washington, D.C. 20314

Dear Sir:

On May 4, 1973 (38 Fed. Reg. 12217), the United States Army Corps of Engineers invited comments on proposed regulations governing the issuance of permits for activities in navigable waters and ocean waters (33 C.F.R. Part 209.120).

The following comments are submitted on behalf of Pennsylvania Electric Company and Metropolitan Edison Company, both of Pennsylvania, and Jersey Central Power & Light Company and the New Jersey Power & Light Company, both of New Jersey. The four companies are subsidiaries of the General Public Utilities Corporation, a holding company which is also the owner of GPU Service Corporation, a subsidiary which provides engineering, coordinating and support services for the several companies included in the GPU system.

After a review of the proposed regulations, we respectfully urge consideration of the following comments and modifications:

1. The proposed regulations refer to the requirement imposed by section 401 of the Federal Power Pollution Control Act Amendments of 1972 (hereinafter referred to as the 1972 Amendments) that an applicant for a federal license or permit obtain a state certification of compliance with the applicable provisions of sections 301, 302, 306 and 307 of the 1972 Amendments. The proposed regulations would require that the certificate affirm "that the discharge will comply with the applicable effluent limitations and water quality standards." (Emphasis added.) (See, for example, section 209.120(c)(1).)

Compliance with "water quality standards" is not required by section 401 of the 1972 Amendments. Under the 1972 Amendments, discharges from point sources are to be evaluated in terms of effluent limitations (or prohibitions), established pursuant to sections 301, 302, and 307, and performance standards, established pursuant to section 306. Water quality standards are not directly applicable to point sources under sections 301 and 302, and are not a standard against which effluent discharges are to be evaluated. Under sections 301 and 302, the only restriction on discharges which is not expressly recognized as an "effluent limitation" is the "any more stringent limitation" set forth by section 301(b)(1)(C). Even under that section, however, water quality standards are not themselves measures of compliance, but are only the basis for deriving "any more stringent limitations." A fair reading of section 301(b)(1)(C), the Committee analysis of H.R. 11896 (contained in pages 100-102 of House Report No. 92-911), the Joint Explanatory Statement of the Committee of Conference (contained in pages 120, 121 of Senate Report No. 92-1236), and the Committee analysis of S. 2770 (contained in Senate Report No. 92-414, 1972 U.S. Code Cong. & Admin. News 3708-3712), makes it abundantly clear that section 301(b)(1)(C) can only be referring to effluent limitations.

Regulations recently promulgated by EPA to implement the NPDES program require only that a certification describe "applicable effluent limitations and other limitations under sections 301 or 302. . . ." (40 C.F.R. Part 125.15(b); 38 Fed. Reg. 13533). We recommend, therefore, that the words "water quality standards" be deleted from those provisions of the proposed regulations describing the character of the certification of compliance to be provided by a State under section 401 of the 1972 Amendments.

2. Section 209.120(g)(3) of the proposed regulations states that the impact of the proposed project on wetlands will be a significant factor in determining whether a Corps of Engineers permit should be granted. The regulations recognize, however, that under the Coastal Zone Management Act of 1972, primary responsibility for the conservation and development of the coastal zone, including wetlands, is entrusted to the States. This acknowledgement by the Corps of Engineers of the primary role of the States should be made more definite and explicit. If the proposed project complies with a state coastal zone management program approved by the Secretary of Commerce, it should be considered conclusive with respect to the wetlands considerations and

therefore, we recommend a new subsection, 209.120(g)(3)(iv)(c), be added, as follows:

> State concurrence with certification that the proposed project will comply with the State's coastal zone management program, as provided for under Section 307(c)(3) of the Coastal Zone Management Act, will be considered conclusive with respect to wetlands considerations.

In addition the regulation should similarly recognize conclusiveness for State approved projects in those States which have established comprehensive regulatory schemes for management of wetlands, but which have not sought or obtained approval of the Secretary of Commerce.

3. Section 209.120(h)(2)(iv) of the proposed regulations requires that an application submitted to the Corps of Engineers for permission to conduct work in navigable waters be accompanied by a copy of, or identification of, the discharge permit application covering operation of the proposed facility. We recommend that this provision be changed to make the submission of the discharge permit application information voluntary.

The NPDES discharge permit application proposed by EPA to be used by manufacturing and commercial applicants (38 Fed. Reg. 9762) requires detailed engineering data and information which is generally available only in the final phases of plant design and construction. The unavailability of this type of information until shortly before the completion of construction is especially pronounced in the larger projects, including nuclear generating stations, where construction can take many years and plant design is an ongoing process which continues during construction. The NPDES permit regulations recognize this and require only that the discharge permit applications be submitted "not later than 180 days in advance of the date on which it is desired to commence the discharge." (40 C.F.R. Part 125.13(d).) The regulations proposed by the Corps of Engineers, therefore, would deny the flexibility envisaged by the NPDES regulations. Postponement in site preparation until completion of all plant design and submission of a discharge permit application would cause unnecessary and

costly delays in plant construction, which would substantially interfere with our legal obligations, as a regulated public utility, of providing safe, adequate and proper service.

Respectfully submitted,

PENNSYLVANIA ELECTRIC COMPANY
METROPOLITAN EDISON COMPANY
JERSEY CENTRAL POWER & LIGHT COMPANY
NEW JERSEY POWER & LIGHT COMPANY

By Milan C. Miskovsky

Milan C. Miskovsky
Debevoise & Liberman
745 Shoreham Building
Washington, D.C. 20005

Their Attorney

W. M. MARSHALL, CHAIRMAN
P. O. BOX 60124
NEW ORLEANS, LOUISIANA 70160

T. A. COLLINS, VICE-CHAIRMAN
1300 SARATOGA BUILDING
NEW ORLEANS, LOUISIANA 70112

H. E. BRAUNIG, JR., SECRETARY-TREASURER
P. O. BOX 61590
NEW ORLEANS, LOUISIANA 70161

June 8, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Gentlemen:

U. S. Corps of Engineers Proposed Regulations on Permits for Activities in Navigable Waters or Ocean Waters (33 CFR 209.120)

Pursuant to the notice contained in the Federal Register for Thursday, May 10, 1973, inviting comments on subject proposed regulations, the Offshore Operators Committee, an organization comprising more than 95 per cent of the companies conducting oil and gas operations under Outer Continental Shelf leases in the Gulf of Mexico, respectfully informs you that it was organized more than 20 years ago to meet the need for coordinated effort on the part of industry and governmental regulatory agencies to cope with the problems of common concern attendant to oil and gas operations in the marine environment and to the regulation of such operations as required by Federal and State laws.

In carrying out its function, as aforesaid, the Offshore Operators Committee has reviewed the proposed captioned guidelines, and pursuant to the invitation for comment contained in the notice in the Federal Register of Thursday, May 10, 1973, offers the following:

1. The proposed revised Section 209.120 on the subject matter of "Permits for activities in navigable waters or ocean waters" appropriately makes reference to the various Acts of Congress which delegate regulatory authority in specific matters and for detailed purposes to the Corps. In constructing this set of regulations, pursuant to the aforesaid authorities, however, the Corps, in Subsection (f) and throughout this body of proposed regulations, has adopted a philosophy that it will or will not issue a permit depending upon whether or not, in the Corps' judgment, the issuance of such permit is or is not "in the public interest".

It is respectfully submitted that this philosophy is not only a departure from statutory authority and mandate, it is basically contrary to our concept of government and is indeed unlawful.

The basic right of the individual to the full enjoyment and exercise of his property is subject only to those restraints which are lawfully placed upon him. For the Executive Department of the Government to limit the individual in the exercise of his property rights on the basis of whether or not it is "in the public interest" is the philosophy of an autocratic form of government, and, if this were expanded, usurpation of all present constitutional rights could result.

The philosophy of the Corps in its permit program should be based on its precise statutory mandate. This would indeed suggest that the entire section be rewritten.

2. In view of the fact that many of these proposed regulations are concerned with the preparation of environmental impact statements prescribed by Section 102(2)(C) of the National Environmental Policy Act, and in view of the fact that new guidelines to Federal agencies proposed by the Council on Environmental Quality on the preparation of environmental impact statements are presently under consideration, it is respectfully submitted that the regulations contained in some of these subsections are premature, and indeed it would be better to await the promulgation of the CEQ guidelines before drafting a revision of Section 209.120.

3. The members of the Offshore Operators Committee are concerned with the question of the disposition drill cuttings (material pumped from wells being drilled for oil or gas) not only on navigable waterbottoms but also on the Outer Continental Shelf. Ordinarily these drill cuttings are deposited on the waterbottoms at the site of the drilling operation. The New Orleans District of the Corps is well aware of this. The problem presented is the application of the definition of a "pollutant" contained in the Federal Water Pollution Control Act Amendments of 1972 and the respective missions of the U. S. Corps of Engineers and the Environmental Protection Agency with regard to the deposit of drill cuttings (a) on the bottom of navigable waters and (b) on the Outer Continental Shelf in the oceans beyond the limit of "navigable waters".

In examining the regulations proposed by the Corp and those promulgated by EPA, this question remains unanswered.

4. Although the provisions of Subsection (f)(3) are indeed an improvement over the situation existing under present regulations where a State agency can, in effect, veto the granting of a permit by the Corps, it is respectfully submitted that local, State, and Federal functions should operate separately unless the Act of Congress under which the Corps is acting predicates such action on State or local acquiescence.

5. There is no provision in the proposed regulations with regard to the assignability of permits. They should be assignable under express conditions, otherwise, a shut down of operations such as producing oil or gas until the assignee of a lease has obtained a new permit from the Corps could have extreme consequences.

6. The two definitions of the term "navigable waters of the United States" referenced in Subsection (d) include areas beyond those found in the court decisions of this country and the members of the Offshore Operators Committee do not acquiesce in these definitions.

Consideration should also be given to include in Subsection (d) a second definition of "ocean waters," the same as that contained in the Federal Water Pollution Control Act Amendments of 1972.

The definition of "dredged material" contained in Subsection (d) should be more precise so that operators can know whether drill cuttings as hereinabove discussed are included.

7. For the most part, oil and gas drilling and producing operations, in order to be economically feasible, must be under the authority of "blanket" permits as is the present practice with respect to Corps permits for erecting structures in the navigable waters and on the Outer Continental Shelf for drilling and producing operations. Presumably, a new function of the Corps will be to permit the deposit of dredged material in the navigable waters but there is indeed a question as to whether this function of the Corps extends to the Outer Continental Shelf under the specific provisions of Section 404 of the Federal Water Pollution Control Act Amendments of 1972. It is indeed necessary that the permits with regard to the discharge of drill cuttings also be "blanket" in nature as the problem exists not only with respect to drilling wells but also with respect to reworking producing wells. Reworking operations are much more extensive than drilling operations and involve the employment of personnel and the dedication of special equipment on a scheduled uninterrupted basis.

8. Subsection (f)(2): The criteria set forth should be reconstructed to conform precisely to statutory objectives.

9. Subsection (f)(3), dealing with the effect on wetlands, raises a question as to what law authorizes this special treatment of wetlands. If this is, indeed, valid, then paragraph (iv) should be changed to provide that all the foregoing factors will be considered in issuing a permit. It would also be beneficial to identify activities which will be permitted in wetlands under specific-named conditions in the permit. As you know, vast quantities of oil and gas have been produced over a long period of time from Louisiana's "wetlands" without appreciable harm to the environment and there is every reason to continue permitting such operations under valid and meaningful conditions.

10. Subsection (f)(4) requires consultation with the Regional Director, U. S. Fish and Wildlife Service, etc. It is stated that this is in accordance with the Fish and Wildlife Coordination Act. It is suggested that this is a misstatement of the provisions of the Act.

11. Subsection (f)(5), pertaining to water quality: As hereinabove stated with respect to the Corps acting on permits independently, with State and local governments performing their function separately, the EPA should perform its function and the Corps perform its function, separately, at least insofar as the regulations exist unless the statutes require otherwise.

12. Under Subsection (f)(9), it is recognized that the Department of the Interior fully evaluates the potential effect of the leasing program on the total environment with respect to islands or structures that are to be constructed on OCS leases. This is not only true with regard to structures on the OCS leases but also includes the pipelines which transport production from OCS leases to the shore and the environmental effect of such pipeline construction in the waters of the territorial sea and in the estuarine areas. Accordingly, it is respectfully submitted that pipelines to shore be accorded the same treatment as the structures on the Outer Continental Shelf if the environmental impact statement has considered them.

13. Subsection (h)(2)(iv), which requires the identification of any discharge permit for pollutants in the application for the Corps of Engineers permit, should be deleted in that it combines or confuses the respective statutory obligations and authority of the Corps and EPA. As hereinabove stated, there is really no cause or basis for combining separate governmental functions. If two permits are required, the operator must have both. Also it is possible that a discharge may not be scheduled to begin from a facility until many months after construction is begun. It makes no sense to delay construction until the discharge permit is granted.

14. Subsection (h)(4)(ii): Notice by publication should be sufficient. Personal notice should be permissive rather than mandatory.

15. Subsection (h)(4)(iii), last sentence: Change the word "must" to "shall have their opportunity to".

16. Subsection (h)(4)(v): The authority of the District Engineer to hold a public hearing if no objections are received should not exist, and the proposed paragraph should be changed accordingly.

If it would be meaningful or helpful to you for further discussion or elaboration of any of the foregoing, we stand ready to meet your request.

Yours very truly,

John P. Everett, Chairman
Legal Subcommittee

Title Insurance and Trust Company
433 SOUTH SPRING STREET · LOS ANGELES, CALIFORNIA 90051 · TELEPHONE (213) 626-2411

June 8, 1973

Office of the Chief of Engineers
Forestal Building
Washington, D. C. 20314

Re: Proposed Policy, Practice and Procedure of the Corps of Engineers Department of the Army Relative to Permits for Activities in Navigable Waters or Ocean Waters (33 CFR 209) Published in The Federal Register of May 10, 1973, Vol. 38, No. 90

Attention: DAEN - CWO - N

Gentlemen:

Please accept the following comments relative to the above proposed policy, practice and procedures on behalf of the Title Insurance and Trust Company and Pioneer National Title Insurance Company, which together as subsidiaries of The TI Corporation (of California) comprise the largest title insurer in the United States. Since these matters only recently received the attention of the title industry and because of your comments termination date of June 11, 1973, the comments in detail from the American Land Title Association, the California Land Title Association and other state title associations will follow as quickly as possible.

Since the above referred to proposed policy, practice and procedure relate to the permit activities of the Corps of Engineers in and upon the navigable waters of the United States I would like to enumerate the following observations:

1. Presumably the Corps is following its duties and authority under the laws of the United States and the Commerce Clause of the Constitution of the United States as such laws and Constitution have been interpreted by the courts of last resort.

2. The recent publication in the Federal Register of September 9, 1972 (Vol. 37, No. 176) indicated that the claimed "regulatory jurisdiction" of the Corps in the Coastal Areas extended "to the line on the shore reached by the plane of the mean (average) high-water. However,

on the Pacific Coast, the line reached by the mean of the higher high-water is used."

As of this date we have been unable to substantiate that any authority of the Corps under applicable law extends above the plane of the mean of all the high-waters, in agreement with the extent of Federal ownership as enunciated in Borax Consolidated vs. City of Los Angeles (296 U.S. 10, 80 L Ed 9) (1935).

3. The higher jurisdictional plane asserted to be applicable to the Pacific Coast waters would question the authority of the United States to have patented to the States under the Swamp Lands Act approved September 28, 1850 (9 Stat. 519, 43 U.S.C. 982, et. seq.) the millions of acres of swamp and overflowed lands which were above the plane of the ordinary high tide as defined in the Borax decision, (and thus uplands) because it is being asserted indirectly in such regulations that such lands were tidelands and thus subject to the Federal Navigational Servitude under the Commerce Clause.

4. Application of the jurisdiction of the Corps to "wetlands". Wetlands are defined as "those land and water areas subject to regular inundation by tidal, riverine or lacustrine flowage. Generally included are inland and coastal shallows, marshes, mudflats, estuaries, swamps, and similar areas in coastal and inland navigable waters".

Here again we have the problem of a non-technical definition of certain lands which could include uplands above the plane of the ordinary high-water mark which we firmly believe are not subject to the jurisdiction of the Corps under the Commerce Clause of the Constitution and assigned authority under the River and Harbor Act approved March 3, 1899 (30 Stat. 1151, 33 U.S.C. 403). Indeed, I can point out instances where members of the Corps have denied jurisdiction above such plane.

5. Many other problem situations, too numerous to mention here, are presented to private land owners, developers, lenders, title insurers and others by these proposed regulations, a few examples of which are as follows:

   a. The patentee (from the State) of the tide or submerged lands has bulkheaded and filled pursuant to permit from the Corps.

No mention was made in the permit of contemplated improvements. Can the owner proceed with his improvements if the permit work was completed prior to December 14, 1968 without going back to the Corps for further approval? If such further approval is required, would he get a letter, new permit or amended permit?

b. Suppose permit work in the navigable waters was just completed. No mention was made in the permit of any contemplated improvements on the filled land. Can the owner safely proceed or what does he ask for from the Corps?

c. Suppose the State has abandoned its common law trust (including public rights of commerce, navigation and fishery) over filled, tide or submerged land patented into private ownership by the State. The Federal Navigational Servitude presumably remains over the land but what will the attitude of the Corps be as far as permits and approval of bulkheading, fill and improvements thereon be?

d. Millions of acres of swamp and overflowed lands have been patented into private ownership (by the United States to the State and then to private owners), same traversed by minor tidal streams or perhaps non-tidal streams navigable at least for recreation purposes. These lands have been reclaimed, streams filled, swamps drained and the land devoted to agriculture for more than 100 years. What is the attitude of the Corps going to be with regard to these minor water areas as to required permits should the use of the land change from agriculture to urban development?

It would be most helpful if representatives of this company and of the title industry could discuss with you, the objectives of these proposed regulations in greater detail. Certainly no one can object to the performance by the Corps of its lawful duties. However, I feel confident that you share our concern for the impact upon the economy of the nation and the private rights of ownership of the people that these proposed regulations could have, if our interpretation thereof prove to be correct.

Very truly yours,

Thomas E. McKnight

Thomas E. McKnight
Vice President

STONE & YOUNGBERG INVESTMENT SECURITIES
MEMBERS PACIFIC COAST STOCK EXCHANGE

June 4, 1973

U. S. Army Corps of Engineers
Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Gentlemen:

On June 3, 1973 in the San Francisco Chronicle there was an article regarding your proposal for acquiring jurisdiction on the approval of construction projects in various tidelands in the country. We contacted your San Francisco Office immediately and are in the process of making a determination of the status of certain properties that we own in Marin County, California and whether or not the development of these properties would be subject to your jurisdiction under this new ruling.

We understand from your office in San Francisco that you, after some long study and work on your part, on May 10th issued the proposed ruling and are giving one month, to June 11th, for public comment and/or criticism. After all of the time you have had to spend on this it seems unreasonable that you only allow thirty days on such a complicated matter for the general public comment. This seems very unfair and inappropriate.

We have been property owners for some years and to date we have not received mailed notice as to any rules you intend to adopt that may effect our property. It seems that established due process with published and mailed notice and public hearings,etc., should be used in this matter. We can appreciate your concern and we hope that you can project yourself into the position of the property owner and can appreciate our concern.

We suggest, therefore, that before you adopt these rules that you go through an established process of public hearing and notice in the local communities as well as taking the responsibility for mailing notice and information to all recorded property owners who may be effected by the rules. We trust you will give careful consideration to this request and we would appreciate your response.

Sincerely,

STONE & YOUNGBERG

David E. Hartley
Partner

DEH:jr

SUITE 2800 · ONE CALIFORNIA STREET · SAN FRANCISCO, CALIFORNIA 94111 · (415) 981-1314

Carl L. Newman
Vice President

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N. Y. 10003
Telephone (212) 460-5133

June 12, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Gentlemen:

Consolidated Edison Company of New York, Inc. has reviewed the Corps of Engineers proposed Policy Practice and Procedure on Permits for Activities in Navigable Waters or Ocean Water, published in the FEDERAL REGISTER of May 10, 1973. We find them to be generally clear and comprehensive. Our specific comments are listed below.

1. Section (h)(2)

With regard to this section, we note that there are several references to "Certification under Section 401 of the Federal Water Pollution Control Act". It is not clear whether, for projects commenced before the passage of the 1972 Amendments to FWPCA, certification obtained under the old section 21(b) will be valid for the purposes of obtaining Corps permits. We believe that certification under the old law should remain valid under the new. Certainly, the validity of a 21(b) certificate should not be ruled out by the proposed Corps regulations.

We believe there is adequate support in the FWPCA for the contention that Section 21(b) certificates issued prior to October 18, 1972 remain valid. Section 4(b) of the 1972 amendments to FWPCA states: "all . . . certifications . . . duly issued . . . pursuant to the [formerly in effect] Federal Water Pollution Control Act . . . and pertaining to any . . . requirements . . . under the [former] Act shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the [new] Federal Water Pollution Control Act."

It is our understanding that the interpretation

of these provisions of the Act are currently under consideration by the agencies involved. We believe that the Corps should not resolve this question, perhaps inadvertently, by a too specific reference to Section 401. We suggest, therefore, that the phrase "certification under the Federal Water Pollution Control Act" be substituted for "certification under Section 401 of the Federal Water Pollution Control Act" wherever it appears in the subject proposed regulations.

Consolidated Edison has been involved in extensive litigation of the certification issued by the State of New York on our Cornwall project. The validity of the certification under State law was finally upheld by the highest court of New York. We do not believe this extensive legal proceeding should be rendered moot by the intervening revision of the statute.

2. Section (c)(5)

With regard to this section on the Fish and Wildlife Coordination Act, we suggest the wording of the section be clarified to reflect the intent of the law. This section refers to "control or modification of any body of water". Unfortunately, these words are not defined. Modification might include chemical, thermal, or flow changes. The language should be tightened up to limit the paragraph to dams, dikes, etc., which structurally control or modify water bodies.

3. Section (g)(14)

This section exempts aerial power transmission lines which are part of a water power project subject to the regulatory authority of the Federal Power Commission. There is no reason to limit this exemption to aerial lines and it should be extended to underwater lines. Although such an exemption is implicit in section 120(c)(6) of the proposed regulations, the use of the word "aerial" in this section creates an ambiguity.

Con Edison appreciates this opportunity to

comment on these proposed regulations. We hope our comments will be helpful to the Corps of Engineers.

Very truly yours,

Carl L Newman

Carl L. Newman
Vice President

LOUISIANA POWER & LIGHT / 142 DELARONDE STREET • NEW ORLEANS, LOUISIANA 70114
MIDDLE SOUTH UTILITIES SYSTEM

May 29, 1973

Department of the Army
U. S. Army Corps of Engineers
Office of the Chief of Engineers
Washington, D. C. 20314

Attention: Mr. Edward A. Greene

Re: PROPOSED REVISION OF
PERMIT REGULATIONS

Gentlemen:

This is in reference to your May 10, 1973 "News Release" regarding captioned subject. We wish to make the following comments regarding the proposed revised permit regulations.

Wetlands Protection

We do not consider building of electric power lines or pipelines, (such as natural gas) a construction that would alter or impair the wetlands. Thus, such construction should not be subject to your permit requirement. When the government is the fee title owner of the property in question, we will, of course, acquire necessary rights of way from the government.

Yours very truly,

LOUISIANA POWER & LIGHT COMPANY

G. P. MARSE
Land & Right of Way Manager

142 Delaronde Street
New Orleans, Louisiana 70114

GPM:cb

35 Strawberry Circle
Mill Valley, CA 94941
June 8, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Re: Proposed changes in regulations of the U.S. Corps of Engineers as reported May 10, 1973, Federal Register.

Gentlemen:

Although a June 11, 1973 deadline for written comments does not allow time for a considered presentation, please accept the reactions below as generalized toward the apparent intent of the proposed regulations.

1. The U.S. Corps of Engineers is the "final" agency of jurisdiction on many large and small actions that originate from a plethora of local agencies that have real or imagined authority over the waters of San Francisco Bay and tributaries. Most of the applications for a permit to modify the bay or shoreline originate in these local, usually overlapping, jurisdictions. Each has its "hearing" as well as prior staff planning and modifying. Presently no private citizen can possibly keep track of the progress of proposed developments throughout the multiplicity of planning "jurisdictions", hearings, etc. for lack of time, expense and patience. In fact, the U.S. Corps of Engineers itself cannot have sufficient knowledge of the variety of factors involved in each case as a practical fact, and must rely on approved permits cited from other agencies as assurance that the development at hand is properly planned to that point in the process.

2. The numerous local agencies have a wide vaiety of expertise and interests applied to each of their permit applications but they do not have hydrological, geological, etc. engineers or stores of such data to draw upon in their planning. In fact, the absence of these kinds of knowledge is so severe at the local level, and probably will remain so for economic reasons, that local planners do not even know their own inadequacies. This cannot be overstated. It is further compounded by numerous and invariable pressures from developers of land projects to satisfy their needs on land and the effect on the water is forgotten if even slightly comprehended.

3. The U.S. Army Corps of Engineers has seemed in the recent decades to take a passive role in its administration as defined under Federal Law. If a consensus was reached by local agencies, the Corps accepted a plan as long as obvious and substantial and immediate damage to the waterways was avoided. The Corps exercised a minimum of authority over plans prepared by people not knowledgeable and, most often, completely unaware that problems would be created. Even the newer agency, the Bay Conservation and Development Commission, was quite recently criticized by Senator Nicholas Petris, State of California, author of the act creating that agency, for failing to do the job intended by his legislation. Even if B.C.D.C. was improved by new Petris legislation, and

more experienced staff added, that agency would require ten or more years to acquire and rationalize the data they need, but this data already exists in the Corps and related Federal agencies. At this point in history, the Corps is not only the logical (and legal) choice but the only available choice for exercising knowledgeable and expert administration of the waterways. And this point in history cannot be by-passed because the past years of insufficient administrative control together with rapid population increase have brought us to a series of small and large imminent disasters too numerous to even list here. Both as a private citizen concerned with his own "backyard" (adjacent to waterways) and as a professional concerned with using navigable waterways (design consultant and yacht broker), I daily observe new problems arising in this area and the incidence and severity of these problems increasing at a rapid rate.

If not explicitly indicated above, I strongly approve, in general, of the substantial increase of authority of the Corps as proposed and including much stronger technical evaluation, greater geographical authority (to prevent "land activities" from destroying waterways), and complete supervision of all factors affecting the waterways. With sole final authority should go sole final responsibility because there must be one agency that everyone can turn to as the place for thorough, cohesive planning and only the Corps offers the resources and the legal jurisdiction sufficient to supply what is necessary.

By no means do I wish to imply here that I endorse or criticize past, or even present policies and practises of the Corps but only to indicate an immediate necessity. The problems, physical and administrative, exist now and it is somewhat academic as to what historical factors were most "significant" in creating the present situation.

It is difficult to find a perspective or an example to precisely describe the scale of the physical problem without supplying drawings, data and engineering analysis in quantity. However, I have watched many channels altered by many causes in this area for the past 18 years and have had direct "hands on" experience in the tsunamis of 1958 and 1964 to be aware of cumulative effects. In 1958 property damage was minimal (although it was the largest tsunami in recent decades), and in 1964 property damage was substantial. Today, it is my judgement that property damage would be disastrous and loss of life can even be expected. Masses of high moving inertia water can now reach areas never before affected while new developments extend much farther into the Bay than ever before. Thus the need for the Corps to extend its attention and vigorous administration to "land development" that may not seem directly invloved. Certainly, a local county tax assessor who follows state law and assesses taxes at "the highest possible use" of the land, e.g. apartment houses, does not realize that filling land adjacent to a channel changes the physical movement of water in that channel to a great degree. This minute portion of the problem of authority and responsibility is not only not labored, it is a standard, routine, accepted, everyday occurance.

A tsunami may seem a dramatic example but the economic costs of increased siltation (with an increasing rate), decrease of navigable waters, increase of debris on these waters, are equally good perspectives, as well as, examples where the budget of the Corps itself can and will be strained beyond any possibility of adequate solution. Usually problems of government are not solved until they approach disaster and a tsunami would provide that motivation instantly. But every other perspective indicates very large scale costs in the very near future.

If there is any contribution of opinion of information that would assist your office in making swift and substantial progress to improve the administration of waterways under the Corps jurisdiction, I am willing, time and resources permitting, to assist in any way that you may find suitable.

Thank you,

Donald R. Kogut

Donald R. Kogut

TEXACO
INC.

1001 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

JAMES H. PIPKIN
EXECUTIVE VICE PRESIDENT

June 11, 1973

Brigadier General James L. Kelly
Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Dear General Kelly:

In response to the revisions of the regulations concerning permits for activities in navigable waters or ocean waters, as published in the Federal Register on May 10, 1973, the following comments are submitted for your consideration.

1. Texaco strongly contests the legality and scope of the redefined phrase "navigable waters of the United States" promulgated by the Corps of Engineers in September, 1972 and the expanded and more precise definitions incorporated in the proposed regulations. A major portion of Texaco's operation in Louisiana by the Onshore Division are located in the coastal waters, coastal marshes subject to tidal overflow, and swamp and overflow lands. For many years the Corps of Engineers have interpreted the phrase "navigable waters of the United States" as being waters navigable in fact and basically subject to State ownership and jurisdiction. During September, 1972 the Corps of Engineers promulgated regulations redefining the phrase "navigable waters of the United States" which describes the water and land areas under the jurisdiction of the Corps of Engineers permit procedures. The proposed regulations further explain and more precisely define their jurisdiction. Depending upon its legality, the broad definition of navigable waters includes not only the water areas but the land areas as well subject to tidal overflow where the majority of our operations are located. Consequently, a major portion of our operations will fall under the jurisdiction of the permit program.

2. The primary importance placed on public interest in the evaluation of applications for permits is clearly expressed throughout the proposed regulations. As set out in the last three lines of Paragraph f (1), Page 12219, entitled "General policies for evaluating permit applications" the sentence reads "No permit will be granted unless its issuance is found to be in the public interest." The same criteria is cited on Page 12219 - Paragraph (f) (3) (iv), Page 12220 - Paragraph (g) (3) (iv), Page 12227, Paragraph (j) (1) (ix) (a) and generally referenced to in other paragraphs.

It is doubtful if 90% of the permits presently issued to private individuals or businesses have not in one way or the other affected the public interest. Now that the scope of the navigable waters has been enlarged to include lands owned by private individuals, nothing is said to establish the rights inherent in the ownership of the land, a valid lease, or a valid right-of-way agreement. These regulations as written will allow other Federal agencies, State, parish or county, city and any other political subdivision or individual to object to the granting of a permit. This could have the effect of delaying and even prohibiting the exploration and development of certain areas that may be considered to have significant potential for oil and gas accumulations.

The term "Public Interest" should be defined under section (d), Page 12218, entitled "Definitions" setting forth the following relevant factors:

> "(8) The term "public interest" means conservation; economics; rights inherent in the ownership of the land, a valid lease, or a right-of-way; esthetics; general environmental concerns; economic impact on area of interest; historic values; fish and wildlife values; development of new domestic reserves of fuel; flood damage prevention; land use classifications; navigation; national energy crisis; recreation; water supply; water quality and in general, the needs and welfare of the people."

The four factors underlined above were entered into the relevant factors listed on Page 12219, Paragraph (f) (1) and considered to be necessary for the District Corps of Engineers to evaluate in connection with applications for permits.

If the Corps of Engineers decides that the term "public interest" need not be defined in section (d), then the four relevant factors listed above should be entered under the relevant factors to be considered under Paragraph (f) (1) cited above.

3. The regulations as proposed give to authorized State and/or local agencies the absolute veto power over the issuance of a permit by the Corps of Engineers. Reference is made to Page 12219 - Paragraph (f) (3) (i) and Page 12229 - Paragraph (p) (1). The objection to the issuance of the permit does not have to be stated.

Texaco objects strongly to the Corps of Engineers giving to the State, local and municipal authorities the right of veto power over the Corps issuance of a permit. The agency or authority objecting should be required to state clearly their reasons and have the final determination made by the Chief of Engineers.

4. The NEPA of 1969 requires the preparation of an environmental impact statement prior to any major Federal action including offshore lease sales. Subsequent to the issuance of the draft statement, public hearings are scheduled and all interested Federal, State and local agencies, political subdivisions, and the public are given an opportunity to express their views either for or against the proposed action. Once the public hearing is held, the final impact statement is published, and the Federal action, or lease sale is held; then the lessee should be permitted to drill, install platforms, lay pipelines to onshore terminals and produce without the necessity of following the extensive permit procedures outlined in the proposed regulations.

5. The requirement for an individual environmental impact statement for activities which are subject to an environmental impact statement as covered above, appears to be a duplication and should be omitted. Reference is made to Page 12224, Paragraph (i) (1) (iv). If this requirement remains in the recommendations which allows the District Engineer to make a decision as to the necessity for requiring an environmental impact statement, the guidelines should be set forth. This will allow the Applicant to be aware of the possible necessity of preparation of an environmental impact statement and will assist the District Engineer in reaching a decision as to the necessity for requiring an impact statement.

6. The time period required to secure a permit can be extremely excessive. Time guidelines are set forth for the processing of applications; however, it is questionable if all permits must be handled under the time frame set forth. Following the public notice to be issued by the Corps within 15 days after an application for a permit is received, the public can be given up to 75 days to offer comments. Following receipt of comments from the public, hearings may be necessary which could delay a permit for a period exceeding 6 months. Due to the pressing need for the oil and gas industry to find and produce additional reserves, a more expeditious handling of permits will be necessary. An overall time limit of 90 days should be set.

7. The proposed regulations should include a provision which will allow all existing permits to continue in full force and effect until their normal expiration.

8. Section (g) (12) Page 12222 entitled "Unauthorized Activities" of the proposed regulations may require filing for after the fact permits based on the new definition of navigability.

There are certain special provisions for spoil deposits which will allow the Corps to dictate or prescribe certain corrective action to be taken to receive a permit. This could be very costly depending upon the requirements imposed. Also, there are certain additional legal actions that can be taken. This section must be qualified to delete activities performed before the effective date of these regulations.

In view of the above, we offer the following specific comments and recommendations for your consideration:

(1) Page 12219 - Paragraph (f) (1)
Refer to discussion of key issue 2 above.

(2) Page 12219 - Paragraph (f) (3) (i)
Refer to discussion of key issue 3 above.

We recommend that an additional phrase be added as follows:

"As a matter of policy, permits will not be issued where authorization of the proposed work is required by State and/or local law and that authorization has been denied for a valid reason clearly set forth and recognized by the Chief of Engineers."

Also, last sentence of the paragraph should be rewritten as follows:

"If the State or local denial of authorization cannot be resolved, the application will be forwarded to the Chief of Engineers in accordance with paragraph (s) of this section for review and decision."

(3) Page 12219 - Paragraph (f) (3) (ii)
Refer to discussion of key issue 2 above.

We recommend that this paragraph be rewritten as follows:

"....or policies are applicable to the land or water areas under consideration same shall be rebuttably presumed to reflect local factors of the public interest."

(4) Page 12219 - Paragraph (g) (1) (i) (a)

We recommend changing the word general on the second line to inherent.

"....land owner has the inherent right to protect his property...."

Paragraph (g) (1) (i) (b)

We recommend changing the word general on the first line to inherent.

"A land owner's inherent right of access to navigable waters...."

(5) Page 12220 - Paragraph (g) (1) (ii) (a)

In the event the after the fact permit requirement is held applicable to activities completed prior to the final promulgation of the regulation, we may be faced with the problem of filing for after the fact permits on structures that will now be under the jurisdiction of Section 10 based on the new definition of navigability. In an effort to offset the financial liability of the relocation clauses for permits issued for these structures, we recommend that the first sentence should be rephrased as follows:

> "Where it is found that the work for which a permit is desired may interfere with a proposed civil works project of the Corps of Engineers except for those structures and works requiring an after the fact permit on the effective date of these regulations and were built on land under private ownership, the applicant and the party...."

(6) Page 12220 - Paragraph (g) (2) (ii)

We have many permits which require maintenance dredging and in order to relieve ourselves and the Corps of Engineers from undue burdensome paper work required to revalidate our maintenance provision of the permit every 10 years as recommended, we recommend that a quantity measurement of 100,000 cu. yds. be used to distinguish between major and minor dredging. Any major maintenance dredging over 100,000 cu. yds. would require revalidation of permit every 10 years.

We recommend the second sentence be rewritten as follows:

> "Authority for major maintenance dredging consisting of 100,000 cu. yds. or more on individual projects will be subject to revalidation at regular intervals to be specified in the permit."

(7) Page 12220 - Paragraph (g) (3) (iv)
Refer to discussion of key issue 2 above.

(8) Page 12220 - Paragraph (g) (3) (iv) (b)

We recommend the following phrase be added:

> "The applicant upon written request of the Corps of Engineers must provide sufficient data..."

(9) Page 12222 (g) (12) (i) through (vi)
Refer to discussion of key issue 8 above.

Recommend deleting any reference to activities carried on prior to the final promulgation of the regulations. Alternatively, have an additional paragraph inserted stating the rights to a public hearing and any other course of action that may be available.

(10) Page 12223 (g) (17) and all sections thereof -

Incorporation of the Marine Protection, Research and Sanctuaries Act of 1972, Public Law 92-532 is a prime example that the proposed regulations are premature. Your attention is directed to the Federal Register, Vol. 38, No. 94 - Wednesday, May 16, 1973 whereby the Environmental Protection Agency has proposed criteria for issuance and denial of permits for the disposal of dredged materials and other materials into ocean waters. Comments on the proposed criteria for ocean dumping will be received up to June 23, 1973, which is twelve (12) days after the deadline for comments on the Corps of Engineers proposed regulations.

(11) Page 12223 (g) (17) (iv)

This paragraph allows the Regional Administrator 15 days to challenge the issuance of a permit for discharge of dredged or fill material into navigable waters or ocean waters.

We recommend that the following sentence be added between the first and second sentence in this paragraph:

> "For the purpose of this subsection, the public notice issued and forwarded to the appropriate Regional Administrator as set forth under Paragraph (i) (1) (ii) shall be considered Corps of Engineers intent to issue permit."

(12) Page 12223 (g) (18) (i)

The State of Louisiana is preparing a coastal zone management plan under the "Louisiana Advisory Commission on Coastal and Marine Resources" and "The Louisiana State Planning Office."

The Commission is assigned the task to develop a coastal management plan for Louisiana. This report is to be submitted in September, 1973, and ultimately has to be approved by the Secretary of Commerce before it will be turned over to the Planning Office for implementation.

Due to the time lag involved it will be impossible for the applicant to certify and the appropriate State Agency to concur that the proposed activity complies with the Coastal Zone Management Program.

Therefore, we will have to receive a finding from the Secretary of Commerce that the proposed activity is in compliance with the Coastal Zone Management Act of 1972. Whether the Secretary of Commerce is in a position to issue the necessary finding at this time is a matter of speculation.

We recommend that the following sentence be added between the first and second sentence:

> "Certification by the applicant and concurrence by the appropriate state agency or the Secretary of Commerce will not be required by the Corps of Engineers until such time as the Coastal Zone Management Program is approved by the State and the Secretary of Commerce."

(13) Page 12224 - Paragraph (h) (2) (ii)

Comment 10 above applies to this section. Further certification and the requisite application fee should not be required for the dredging of canals and pipeline ditches.

(14) Page 12224 - Paragraph (i) (1) (iv)
Refer to discussion of key issue 4 and 5 above.

We recommend that the first sentence be rewritten as follows:

> "At the earliest time during the processing of <u>any</u> application <u>involving a project not already subject to an environmental impact statement</u> when he can make...."

(15) Page 12225 - Paragraph (i) (2) (i) (b)

Agency should be afforded only thirty days to act on a request for certification with a maximum time of three months.

(16) Page 12225 - Paragraph (i) (2) (ii)

Time allowed for state agencies to respond to an application should be reduced from six months to three months.

(17) Page 12226 - Paragraph (i) (1) (ix) (a)
Refer to discussion of key issue 2 above.

(18) Page 12227 - Paragraph (m) (1)

Engineer Form 1721 is proposed as the basic form for authorizing activities in navigable waters or ocean waters. This is another example that the regulations are premature inasmuch as said form is not available for review and comment.

(19) Page 12228 - Paragraph (n) (5)

We recommend the following phrase be inserted: (See comment 6)

"If the authorized work includes periodic major maintenance dredging consisting of 100,000 cu. yds. or more on individual projects (see paragraph (g) (2) of this section), an expiration date...."

(20) Page 12228 - Paragraph (o)

"Modification, suspension, or revocation of authorization", provides for the District Engineer to reevaluate the circumstances and conditions of the permit and to initiate action to modify, suspend, or revoke a permit. This provision seems injurious since the permittee may have proceeded in good faith to make investments and perform extensive work on a project and then, if a permit is modified or revoked, would sustain a substantial loss through no fault or misjudgment on his part.

(21) Page 12229 - Paragraph (p) (1)
Refer to discussion of key issue 3 above.

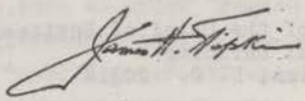
We recommend the following phrase be added to the second sentence: (see comment 2)

"District engineers are authorized to deny permits when required State or local authorization has been denied for a valid reason clearly set forth and recognized by the Chief of Engineers (see paragraph (f) (3) (i) of this section), when a state has...."

In conclusion, these proposed regulations are primarily intended to insure that all public interest and environmental aspects of proposed work in coastal and navigable inland waters of the United States be protected. Texaco recognizes and accepts its responsibility to help maintain a safe and clean environment; however, the industry also has the responsibility to find and produce additional domestic oil and gas reserves to help alleviate the present energy shortage. Equal consideration should be given to each area of responsibility in considering permits affecting the oil and gas industry.

Thank you for allowing us to submit the foregoing.

Yours very truly,



JHP:jk

LAW OFFICES OF
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TELEX 34743
CABLE ADDRESS

June 8, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Gentlemen:

Enclosed is a memorandum containing my opposition to a portion of the Corps' proposed regulation on "Permits for Activities in Navigable Waters or Ocean Waters". In the event the recipient of this memorandum is inclined to believe that I have misconstrued the proposal, I refer you to the attached newspaper article purporting to set forth the construction of the proposal by representatives of the local Corps.

Your consideration of my objections would be greatly appreciated.

Yours very truly,

Fredrick H. Hawkins

Encs.

OBJECTION TO PROPOSED PARAGRAPH 209.120(g)(12)(vi) -- "UNAUTHORIZED ACTIVITIES" (38 F.R. 12,217, p. 12,222; May 10, 1973)

The proposed regulation in Paragraph 209.120(g)(12)(vi) would permit the District Engineer to order the removal of completed work on land now designated as "wetlands" commenced or completed on or after December 18, 1968, and even would permit such an order "regardless of date of construction or previous disclaimers" on the nebulous basis of a finding of "public interest" which "requires an exercise of regulatory authority". The publication in the Federal Register on December 18, 1968 (33 F.R. 18,670) is relied upon to support this proposal. This publication "stated for the first time that the Corps would consider pollution and other conservation and environmental factors" in determining whether permits should be issued (U.S. v. Pennsylvania Industrial Chemical Corp. (May 14, 1973) 5 ERC 1332, 1338); but the same publication contained regulation no. 209.260 (33 F.R. 18,692) which defined navigable waters in the classic manner in accordance with the cases of the "Daniel Ball", the "Montello" and related cases. "Navigable waters" as defined in those cases did not include wetlands. The mere recitation that environmental factors were to be considered in granting or denying permits did not in any way affect the Corps' classic definition of navigable waters and certainly did not broaden it to include wetlands.

The validity of the Corps' attempt to broaden the definition of navigable waters in its redraft of Section 209.260 on September 9, 1972 (37 F.R. 18,289) and its attempt to further broaden this definition in the proposed

regulation is not here in issue. The point is there was no broadening of the definition of navigable waters in the regulation of December 18, 1968.

In the case above cited the United States Supreme Court pointed out that the reference to environmental matters in the 1968 publication was immaterial to a solution of the question there involved because the Corps continued to construe Section 13 of the Rivers and Harbors Act "as limited to water deposits that affected navigation" (p. 1338). Similarly here, the 1968 publication does not justify retroactive action of the Corps concerning fills on wetlands because the Corps in the same publication defined navigable waters as not including wetlands.

Retroactive action concerning fills in areas other than those historically determined to be navigable waters, simply because permits were not obtained, is invalid because there was no permit procedure. As pointed out by the court in the Pennsylvania Industrial Chemical case (footnote 11, p. 1335), Section 11 of the Rivers and Harbors Act required the secretary to set up a permit procedure, but there was no permit procedure for filling wetlands at the time the 1968 publication was issued.

Since there is no significance to the December 18, 1968, date, because the regulation published at that time did not broaden the definition of navigable waters, and since this regulation is the basis of proposed subsection (12)(vi), it is submitted that the entire subsection should be deleted.

American Land Title Association
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1828 L Street, N.W.
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June 18, 1973

Office of the Chief of Engineers
Forestal Building
Washington, D.C. 20314

Re: Proposed Policy, Practice and Procedure of the Corps of Engineers Department of the Army Relative to Permits for Activities in Navigable Waters or Ocean Waters (ee CFR 209) Published in The Federal Register of May 10, 1973, Vol. 38, No. 90

Attention: DAEN - C W O - N

Gentlemen:

We appreciate your allowing our association an extension of time so that we could reply to the proposed procedures outlined in the above issue of THE FEDERAL REGISTER.

You have already received comments from Mr. Thomas E. McKnight, Vice President of Title Insurance and Trust Company in which he expresses some of his concerns. Rather than reiterate his points, we incorporate them by reference into these Committee Comments and make the further observations as well:

First, the Committee wishes to commend the Corps for the laudable objectives apparent in these proposed rules. We intend all of our suggestions to be positive in nature. We hope you will consider our comments to be constructive and not merely critical or negative.

First, taking an overview of the entire matter, we were struck by the awesome complexities in the flow of applications for permits. There seems to be no final central decision point. Most

of the review requirements of the matter flow through the hands of the Chief Engineer. However, a number of the specific matters for which permits are required permit an overriding decision by other departments of the Executive Branch. For instances, in the span covered by pages 12222 through 12226, dependent upon the nature of the activity, applications must also be made to or approved by the Federal Power Commission, Federal Communications Commission, Secretary of State, United States Coast Guard, Administrator of the Environmental Protections Agency, Secretary of Commerce, Secretary of Defense, National Marine Fisheries Service, Director of National Ocean Survey, Bureau of Sport, Fisheries and Wildlife, etc.

It seems to us that this is creating such a great abundance of red tape and communications problems as to make the permit process unwieldy and unworkable.

To go to some of the more specific problems that we feel are present in these proposals:

In the center column, page 12219, Rule 209.120(e)(3)(iii) is a provision which exempts federal agencies from state or local or interstate control, effluent limitations and water quality standards. We see no reason why an agency of the federal government should be exempt from such rules any more than any state agency or individual citizen. If the federal agency wishes to violate such standards it should be made to explain the variation in the public eye and not be exempt.

Right hand column, page 12219, Rule 209.120(g)(1) states that the permit does not convey a property right. We concur with the last part of this statement in that authorization of work or structures does not authorize any injury to property or invasion of other rights. However, we feel that once the permit has been granted and particularly after the authorized work has been done by the citizen that he should be considered to have a property right that should not be taken away without due process.

Further in this same column at (g)(1)(i)(b) appears a statement that "A landowners general right of access to navigable waters is subject to the similar rights of access held by nearby landowners..." (emphasis supplied). It is difficult to determine whether the Corps is attempting to take jurisdiction insofar as access to navigable waters is concerned over private land or not. There is certainly nothing in the law that we are aware of that will permit the federal government or the Corps of Engineers to determine such rights above the main high water plane.

Right hand column, page 12224, Rule 209.120(i)(iv) leaves the decision of need for an environmental impact assessment in the hands of the District Engineer. However, the section does not establish sufficient standards for his decision. It would be much more desirable to remove the human element in the decision.

There is also some thought that any rejected permit should be made a matter of record since the inability of the upland owner to fill to the bulkhead line and erect improvements on that fill might affect the value and desirability of that piece of land. It would seem in the best interest of the consumer to have knowledge of such rejection and making it a matter of public record would seem the most practical way of accomplishing it.

In the left column, page 12227, Rule 290.120(j)(1)(ix)(a) there is a statement which we presume reflects the philosophy of these regulations which is: No permit will be granted unless its issuance is found to be in the public interest. It appears to us that based upon our country's philosophy of private ownership of land, maximum use of it and protection of private property rights, that the statement of principle would be more positively stated as follows: "No permit will be denied unless its issuance would not be in the public interest."

Our committee and other interested members of our industry would be more than happy to discuss the matter of these proposed regulations if you would like. We share your concern with wanting to protect our environment but hope that regulations can be produced which can expedite the permit process and make it possible for upland owners to utilize their property to the fullest extent as long as it does not jeopardize the interest of the general public.

Very truly yours,

C. J. McConville, Chairman
ALTA Navigational Servitude Committee

CJM:mrm
cc: Mr. Robert Jackson
cc: Mr. Gary L. Garrity
cc: Members of the Committee

AMERICAN ELECTRIC POWER *Service Corporation*

AEP

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VICE PRESIDENT, GENERAL COUNSEL AND SECRETARY
A. JOSEPH DOWD
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WILLIAM J. PROCHASKA
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SENIOR ATTORNEYS
JOHN F. DI LORENZO, JR.
ROBERT W. HARMON*
ROBERT E. ADER
RICHARD A. MUSGRAVE
ATTORNEYS

June 19, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Attention: DAEN-CWO-N

Gentlemen:

The American Electric Power Service Corporation, on behalf of the operating public utilities of the American Electric Power System* offers the following comments on the proposed regulations for Permits for Activities in Navigable Waters or Ocean Waters published in the Federal Register of May 10, 1973 [33 CFR Part 209]. Communications regarding these comments should be addressed to me at this office.

Initially we wish to state that we support the position expressed by Edison Electric Institute in its comments regarding

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* Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Kingsport Power Company, Michigan Power Company, Ohio Power Company and Wheeling Electric Company.

the scope of the environmental impact statement specified in §209.120(1)(3)(ii) concerning applications for construction permits under §10 of the River and Harbor Act of 1899. In support of such position we call your attention to the recent case of Rucker v. Willis, 5 ERC 1349, at 1352, (EDNC, May 4, 1973).

We note that in the definition section of the proposed regulations a distinction is made between the definition of "navigable waters of the United States" and "navigable waters" as defined in the Federal Water Pollution Control Act. Our understanding of the proposed regulations is that there is no change in the policy of the Corps of Engineers in regard to the bodies of water encompassed within the permit requirements of §10 of the River and Harbor Act of 1899. If there is an intent to alter the existing policy to enlarge the scope of coverage, we request that this be stated and that we be given an opportunity to respond and to confer with your staff on this matter.

Our next comment relates to the form of applications for authorizations as described in §209.120(h). That section specifies the form to be used as ENG-4345. The latest revision of that form which we have seen is dated May 1971. It includes entries relevant only to water discharges which were formerly included in the program administered by the Corps but which now are included in the NPDES Permit Program which is administered by the Environmental Protection Agency. We request that the form be

revised to eliminate unnecessary entries which relate to discharge under the separately administered NPDES Permit Program.

Next with respect to §209.120(f)(3). We read the statement, specifying a policy of not issuing permits for proposed work where authorization required by state or local law has been denied, as applying to the same scope of proposed work for which federal authorization is requested. For a number of installations which our operating companies construct, a great many permits, federal, state and local, are required at various stages of the construction process. We do not believe that the issuance of a §10 permit under the River and Harbor Act of 1899 should be contingent upon obtaining numerous unrelated authorizations for work above the high water line of navigable waterways. Furthermore, although we recognize that state and local views should be given significant weight, we believe there is no justification for a policy that states that failure to obtain a state or local authorization will preclude, in all cases, the issuance of a federal permit. We believe that the regulation implicitly recognizes that with respect to the construction of structures in navigable waterways federal law is paramount. We therefore recommend that the subsection be revised to allow for the proper exercise of discretion by Federal officials. We propose that paragraph (i) be amended by inserting the word "ordinarily" in front of the first sentence and deleting the last sentence in its entirety.

Our final comments are directed to §201.120(g)(14) regarding minimum clearances for transmission lines crossing navigable waters of the United States. We believe that the proposed minimum additional clearance figures above those clearances required for bridges are far in excess of ligitimate requirements. While we recognize that in certain instances clearances equal to or higher than those figures listed may be justified, we see no reason to set minimum clearance requirements at such heights. We have had considerable experience in constructing high voltage transmission lines. At the end of last year the American Electric Power System had over 4,500 miles of 138 KV lines, over 1,600 miles of 345 KV lines, over 100 miles of 500 KV lines and over 1,000 miles of 765 KV lines. These lines have been designed to provide fixed clearances to the nearest point at ground potential as follows:

138KV	4'
345KV	7-1/2'
500KV	11'
765KV	15-1/2'

These figures equal or exceed those specified in the regulations issued under the Occupational Safety and Health Act published in the Federal Register December 16, 1972 at page 27578 [29 CFR 1926.950]. We believe that our design clearances and those specified under OSHA take into consideration the relevant degree

of hazard under conditions which are comparable to those for which the regulations are proposing minimum clearances. We therefore request that the minimum clearances above clearance required for bridges be lowered to accord with the more generally accepted standards in the industry. Since the justification for the proposed minimum clearances has not been stated, we hereby request an opportunity to confer with your staff on this proposal. We believe that an opportunity to confer on this subject will be worthwhile for all concerned.

We appreciate the opportunity of expressing our views on this most important proposal and we are confident that our comments and recommendations will be accorded serious consideration.

Respectfully submitted,

A. Joseph Dowd

AJD/lad

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AREA CODE 713

June 19, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Gentlemen:

This letter is written in answer to a notice issued by the Department of the Army Corps of Engineers on May 4, 1973, 33 CFR Part 209. We realize the date fixed in the notice for comments has passed, but are submitting our comments in the hope that they may be helpful in preparing the final draft of the proposed regulations.

One overall problem which will face many applicants for permits under the proposed rules is that the factors to be considered in connection with such applications are so general and wide in scope that neither the applicant nor the Corps is furnished with any adequate guidelines for the preparation of an application and the granting or denial of the same.

A second and similar problem is the emphasis which is placed on environmental consideration at the expense of all other considerations relating to the public interest. The Environmental Protection Act directs that a number of factors be taken into consideration in arriving at the public interest including economic and other factors so that environmental values may be protected in a manner "consistent with other essential considerations of national policy" (42 USC 101). This is particularly true at the present time when the country is suffering from an acute shortage of energy and time is vitally important in the all-out effort now being made to meet such shortage.

In addition, the proposed rules place a tremendous burden on any applicant for a permit to be issued by the Corps of Engineers. They seem to require that any and all state and local agencies must also approve a project before a permit will be granted. The burden is placed on the applicant to meet even the most frivolous objections that might be posed by such agencies and, in effect, gives almost a veto power to any agency

other than the Corps of Engineers, who must make the final decision. We do not feel that the National Environmental Protection Act or environmental considerations should outweigh all other factors in this connection.

Further, the proposed rules unnecessarily involve the duplication of acts by other governmental agencies charged with similar responsibilities in connection with a single project. For example, the Department of the Interior, in offering offshore leases for sale, requires an extremely detailed and extended environmental impact statement which takes into consideration the fact that drilling platforms must be constructed, wells must be drilled and pipelines to transport the oil or gas must be constructed in offshore waters. In connection with said sales, extensive public hearings are required and all parties, including the Corps of Engineers as well as all federal, local and state agencies, and the interested public, are permitted to participate and comment on the environmental impact of all phases of such project. After this has been done, it is duplicative, time consuming and costly to have a subsequent similar procedure relating to the construction of facilities which have already been considered in connection with the lease sale. It would appear appropriate for such subsequent hearings to be limited to new issues or matters which relate only to the specific portion of the overall project involved, such as the routing of a pipeline or the location of a particular drilling platform or other structure.

We specifically question the times fixed in 209.120 (i), (j) and (k). The application of the maximum times prescribed in these sections could delay the implementation of a badly needed project for more than a year. It seems to us that all of these times could be shortened materially without infringing the rights of any parties to be heard and that the public interest would be better served by substantially reducing these time periods and the consequent delay.

In conclusion, we might state that our objections to the proposed rules are principally concerned with the delay and duplication of effort. We earnestly suggest that serious consideration be given to making changes which will contribute to more speedy determination of the issues involved and the prevention of duplication of effort among various governmental agencies.

Very truly yours,

W. H. Davidson, Jr.
General Attorney

WHDjr:lp

POTOMAC ELECTRIC POWER COMPANY
1900 PENNSYLVANIA AVE., N. W.
WASHINGTON, D. C. 20006

GEORGE W. WARLICK
ASSOCIATE GENERAL COUNSEL

June 11, 1973

Office of the Chief of Engineers
Forrestall Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Re: Permit For Activities in Navigable Waters or Ocean Waters -- Proposed Policy, Practice and Procedure -- (Federal Register, Volume 38, No. 96 - Thursday, May 10, 1973)

Dear Sirs:

Reference is made to the Notice of Proposed Policy, Practice and Procedure which appeared in the May 10, 1973 Federal Register at pages 12217 through 12230.

This Company is particularly concerned with Section (1) Environmental impact statement which appears on page 12227 of the Register. Subsection (3)(ii) of that section would expand the scope of environmental impact statements to include consideration of matters which are beyond the law on which the authorization depends. We respectfully suggest that the subsection appears to attempt to accomplish regulation of areas by the adoption of the proposed Policy, Practice and Procedure where no basis for such regulation presently appears in statutory law. We urge that such subsection not be adopted.

Thank you very much for the opportunity to comment.

Very truly yours,

George W. Warlick

COLUMBIA GAS SYSTEM SERVICE CORPORATION

E. D. CALLAHAN
VICE PRESIDENT
ENVIRONMENTAL AFFAIRS

20 MONTCHANIN ROAD
WILMINGTON, DELAWARE 19807

June 8, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D. C. 20314

Attention: DAEN-CWO-N

Gentlemen:

NOTICE OF PERMITS FOR ACTIVITIES IN
NAVIGABLE WATERS OR OCEAN WATERS
(Federal Register, Vol. 38, No. 90,
Thursday, May 10, 1973)

Columbia Gas System is composed of a parent holding company, a service company and 17 subsidiary companies. The companies are engaged primarily in the production, purchase, transmission, storage and distribution of natural gas at retail and wholesale.

Columbia commends the Corps of Engineers for its thorough description of Policy, Practice and Procedure in the Proposed Rulemaking. The description is clearly stated and will be of great value to persons and companies requiring permits or approvals from the Corps.

We would suggest only one change which we suspect may have been a printing error under Section 209.120(i)(3)(ii) on p. 12226, "The receipt of comments as a result of the public notice should not extend beyond 75 days from the date of the notice" should read "... extend beyond 45 days from the date of the notice". This would track with the time period suggested by CEQ Guidelines and also with the time period in Section 209.120(j)(viii) on p. 12226 which suggests "... 30 days as a reasonable period of time normally but not less than 15 days is sufficient for interested parties to express their views".

Sincerely,

E. D. Callahan

EDC:amd

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WILLIAM R. FASCOE
JAMES A. MOORE

HARRY A. JACKSON, JR.
OF COUNSEL

June 8, 1973

Office of the Chief of Engineers
Forrestal Building
Washington, D.C. 20314

Attn: DAEN-CWO-N

Re: Proposed Regulations Superseding
Present Regulation 33 C.F.R. § 209.120
and § 209.130

Gentlemen:

This firm represents Leslie Salt Co. which owns and utilizes for the solar evaporation of sea water for salt production approximately 50,000 acres of lands bordering the San Francisco Bay. Such lands were historically marshlands that have been reclaimed for salt production purposes.

As you undoubtedly know, the Chief of Engineers responsible for the San Francisco Bay has been attempting to assert jurisdiction over marshlands and former marshlands in the Bay to mean higher high water notwithstanding the specific provision in 33 C.F.R. § 209.260(k)(2) (as amended September 16, 1972) which limits the U.S. Army Corps of Engineers' claim of jurisdiction in marsh areas to those areas that are "inundated" by mean high water. If the test of lands being inundated by mean high water were applied to the lands of Leslie Salt Co. there would be no question that such lands lie outside the jurisdiction of the Corps. Because of the improper and illegal assertion of jurisdiction over the lands of Leslie Salt Co. currently being attempted by the U. S. Army Corps of Engineers through the Chief of Engineers and the ambiguities that exist on the face of the

aforementioned section concerning wetlands, Leslie Salt Co. wishes to comment upon the proposed regulations described above and submits the following for your consideration.

Proposed Regulation § 209.120(g)(3)

It would appear from the second sentence of proposed § 209.120(g)(3) that an effort is being made to extend jurisdiction of the Corps of Engineers beyond navigable waters of the United States to marshes, swamps and similar areas not currently under its jurisdiction. It is submitted that the Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401 et. seq.) does not extend to such areas and, in fact, such an extension is specifically precluded by the United States Constitution, Article I, Section 8, Clause 3, which limits the congressional power to regulate to "navigable waters of the United States." A long line of judicial decisions clearly excludes swamp and overflowed lands, such as those marshlands owned by Leslie Salt Co. from the definition of "navigable waters of the United States."

A second objection to your proposed regulation concerning wetlands is that it does not distinguish between areas, such as those owned by Leslie Salt Co., which have been reclaimed for many years and those which currently exist as open marsh. If you are seeking to apply the proposed provisions to the salt ponds owned by Leslie Salt Co., it is clear that the extremely restrictive test for granting a permit will all but put Leslie Salt Co. out of business. The solar evaporation of salt water for salt production requires continuous levee maintenance by dredging, frequent construction of interior dikes and regular dredging of intake channels to maintain the operation.

It is submitted that the test to be employed in wetland areas to secure a permit is arbitrary and wholly unrealistic if applied to the lands of Leslie Salt Co. It fails to take into consideration long standing improvements which have been constructed at the expense of millions of dollars over the years. It is requested that the regulation should be amended so that it clearly excludes reclaimed marshlands from its application.

General Policy of Evaluating Permit Applications Based Exclusively Upon the Public Interest.

Proposed § 209.120(f) specifies that a new test is to be applied in granting Corps' permits. This test is apparently one based solely upon "the public interest." From past experience in dealing with the U. S. Army Corps of Engineers and in light of the proposed new test to be included in the regulations in question, it would appear that the Corps is abdicating its decision-making responsibility under the Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401 et. seq.) and replacing it with a procedure that will result in the denial of a permit every time the members of the public object to its issuance. The guidelines included within the regulation for determining whether or not the public interest is satisfied are so general and ambiguous that they will afford virtually no assistance in reviewing any permit application.

In your evaluation of the public interest as reflected by the proposed regulations, it appears that the Corps has wholly ignored the rights of the individual private owners of property subject to Corps' jurisdiction. The proposed regulations make no effort to reconcile these rights with the legitimate interests of the public. The only impression that one can get from reading the proposed regulations in their totality is that it will be virtually impossible for any party to secure a Corps permit for work of any substantial nature. Aside from the inequities of such a proposal and the fact that it is clearly unauthorized by the Rivers and Harbors Act of 1899, serious constitutional questions arise with respect to the deprivation of property rights without due process of law. It would appear that the Corps has wholly abandoned the concept of due process in an effort to take a politically expedient position necessary to quiet objections that have been raised by various conservation groups. In so doing, the rights of individual landowners have been totally sacrificed. It is suggested that a more balanced approach is not only called for but is legally required.

Proposed Regulation Concerning
Rights of Adjacent Properties.

In § 209.120(g)(1)(i)(b), it is inferred that adjacent landowners have rights across their neighbors' property to gain access to navigable waters. This provision is so broadly drafted that it would permit virtually any landowner to cross his nieghbor's property to secure access to the San Francisco Bay. If this is not the intent of the regulation, it should be amended. If it is the intent, the regulation is clearly unconstitutional. It is submitted that only riparian landowners have access to navigable waters. Landowners whose property does not front on navigable waters have no right to cross the intervening landowner's property to gain access to navigable waters.

Retro-active Application of
New Regulations.

In paragraph (g)(11)(vi) of § 209.120, you state that applications will not be required for work or structures completed prior to December 18, 1968, provided, that in certain unspecified situations permits may be required where the public interest requires. You do not define the situations in which the public interest would require the exercise of such regulatory authority. Any retro-active application of the permit procedures proposed in the new regulations obviously raises serious questions of fairness and due process with respect to the landowner who had acted in good faith relying upon the Corps' prior disclaimer of jurisdiction.

The same argument applies to the provision concerning modification or revocation of prior authorizations contained in paragraph (o)(1) and (o)(2) of § 209.120. Aside from the constitutional questions that arise from the procedure that is advocated in such provisions, the regulation is totally devoid of any suitable guidelines governing when and in what instances the District Engineer may properly

modify or revoke authorizations. Clearly, without suitable guidelines, any permit is arguably not worth the paper it is written on if it may be revoked at the whim of the Engineer or upon the slightest agitation by a small number of citizens.

Leslie Salt Co. respectfully requests that you consider these comments and make suitable amendments to the proposed regulations.

Very truly yours,

LANDELS, RIPLEY & DIAMOND

Edgar B. Washburn

EBW/kdh
cc: John Lillie
Richard Collet
Marvin Grove

Environmental Systems Indus
a subsidiary of Environmental Systems Internationa

June 11, 1973

Office of the Chief of Engineers
U.S. Corps of Engineers
Forrestal Building
Washington, D.C. 20314

Gentlemen:

Reference is made to the new set of proposed U.S. Army Corps of Engineers regulations as it relates to the San Francisco Bay wetlands. It is our feeling that your new proposed regulations may be suitable or required for other areas of the country but not for San Francisco Bay. San Francisco BCDC has proven to be such an effective conservation instrument, it seems ludicrous to superimpose new regulations over their control activities.

It is obvious that appropriate jurisdictions such as San Francisco BCDC should be exempt from the effects of duplicate contr such as your proposed regulations would impose. We strongly urge that the U.S. Corps of Engineers reconsider its proposal insofar as San Francisco Bay is concerned in order to refrain from complicating an already difficult jurisdictional situation.

Very truly yours,

Roger Holloway

Roger Holloway,
President

PH:RS/ctc

WASHINGTON, D.C. 20310

5 DEC 1969

Honorable Walter J. Hickel
Secretary of the Department of the Interior
Washington, D. C. 20240

Dear Mr. Secretary:

During the past several months representatives of our Departments have been discussing two applications for Department of the Army dredge and fill permits which were filed with the District Engineer, Jacksonville District, by two corporations engaged in land development in the State of Florida. One permit application filed by Donarl of Florida, Inc., sought permission to proceed with plans to fill approximately six hundred and fifty acres of mangrove, upland and water area in northeast Dade County. The second, filed by the Marco Island Development Corporation, sought permission to conduct dredging and filling operations in the Roberts Bay and Smokehouse Creek area of Collier County. Representatives of the Department of the Interior expressed concern about both applications on the grounds that the work proposed would have a significant adverse impact on fish, wildlife and other natural resources.

In an attempt to resolve differences in the views of our Departments Under Secretary Beal met recently, pursuant to our Memorandum of Understanding, with your representative, Under Secretary Train. Although that meeting produced a great deal of useful discussion, we were unable to reach agreement with respect to the permit applications. Since that meeting, I have carefully considered each application in the light of the objections raised by Under Secretary Train and the circumstances surrounding the proposed developments. I have reached the conclusion that, with the inclusion of special conditions intended to minimize any adverse effect of the work to be undertaken on fish and wildlife values, issuance of the requested permits is in the general public interest.

Under Secretary Train has stressed what I know is of very great concern to you -- the need to preserve our environment and all of our natural resources from piecemeal destruction. I share that concern

and, in a letter to Governor Kirk announcing my decision on these permit applications, I have emphasized that major dredge and fill permit applications will not be routinely approved and have underscored the need for the full implementation of a comprehensive plan to control development in coastal areas. A copy of that letter is attached for your information.

I have also asked Governor Kirk to have an appropriate Florida official contact Robert E. Jordan, III, my Special Assistant for Civil Functions, to explore ways in which we at the Federal level can constructively cooperate with the State of Florida. I have asked Mr. Jordan, when that contact has been made, to call John Quarles, your Assistant for Program Planning and Coordination, to explore with him ways in which the State of Florida, the Department of the Interior and the Department of the Army can work together to provide a coordinated approach in the permit area.

I appreciate the thoughtful assistance which representatives of your Department continue to provide on these difficult permit applications and I am looking forward to continued constructive discussions which will enable us to jointly pursue the goals of the Administration which are associated with Federal permit activities.

Sincerely,

Stanley R. Resor

Attachment
As stated

Stanley R. Resor
Secretary of the Army

CF:
South Atlantic Div.
Jacksonville Dist.

WASHINGTON, D.C. 20310

Honorable Claude R. Kirk, Jr.
Governor
State of Florida
Tallahassee, Florida 32304

Dear Governor Kirk:

As you know, pursuant to section 403 of Title 33 of the United States Code, I have responsibility at the Federal level for reviewing certain types of applications for permission to perform work in navigable waters of the United States. Many of the applications for permits which reach my desk, particularly those requesting authority to engage in dredging and filling operations in navigable waters, underscore the fact that the natural resources of our nation and of our states are being diminished in quantity and quality in the face of the demands of a burgeoning population. I know that you -- the Governor of a state that has been particularly blessed with an abundance of marine and wildlife resources -- have been particularly sensitive to the need to preserve such natural resources for future generations.

I have today authorized the granting of two dredge and fill permits relating to land development in the State of Florida. One permit authorizes Donard of Florida, Inc., to proceed with plans to fill approximately six hundred and fifty acres of mangrove, upland and water area in northeast Dade County. The other permit authorizes the Marco Island Development Corporation to conduct dredging and filling operations in the Roberts Bay and Smokehouse Creek area of Collier County.

The decision in both cases was difficult, particularly in view of advice received from the Department of the Interior to the effect that the work proposed to be undertaken would have an adverse impact on important marine and environmental resources. On balance, after a careful examination of the circumstances surrounding each application and the inclusion in the respective permits of a number of conditions intended to minimize any adverse effect of the work to be undertaken, I have concluded that approval would be in the general public interest.

Approval of the dredge and fill operation planned by Donarl of Florida, Inc., by the Trustees of the Internal Improvement Fund and the commitment of the Trustees to spend $100,000 to rebuild habitats for fisheries in Dumfoundling Bay were specifically noted in the course of my review of that permit application. Similarly, and perhaps more important, I noted that the Commissioners of Dade County have committed themselves to take the necessary steps to preserve and protect from future development substantial mangrove areas in south Biscayne Bay. Donarl of Florida, Inc., has pledged itself to conducting its dredge and fill operations in a manner that will protect, to the extent possible, the natural resources of the area, and the Donarl permit contains conditions requiring the work to be so performed.

It is my understanding that both the Trustees of the Internal Improvement Fund and the Commissioners of Collier County have also reached the conclusion that the work proposed be undertaken by the Marco Island Development Corporation is in the public interest and have approved the proposed work. To minimize the impact of its proposed work on fish and wildlife resources in the area of the proposed development, the Corporation modified its original dredging plans to provide for the preservation of some 102 acres of water and bottom land in its natural condition. Some mangrove areas are to be preserved and the corporation has committed itself to planning and developing a ten acre experimental mangrove area to offset, at least in part, any degradation of the fisheries habitat in areas to be dredged.

In correspondence and in discussions pertaining to the Marco Island permit application, the Department of the Interior has highlighted what is, in the opinion of that Department, a major obstacle to its effective review of applications involving proposed work in estuarine areas in Florida and other areas of the country. The concern of the Department of the Interior was reflected in a recent letter from Under Secretary of the Interior Russell E. Train to the Director of Civil Works, Corps of Engineers:

> A major problem which confronts this Department in its review of permit applications is the absence of any systematic plan, either State or Federal, to regulate the development of coastal areas. It is essential that large sections of the estuarine ... other coastal areas in this country should be

> preserved permanently in their natural condition in order to satisfy future needs. We also recognize that an orderly development of the residential, industrial, commercial, and other facilities needed for an expanding population may require the use of certain natural areas for other purposes. At this time there is no overall plan to assure that certain areas will be preserved while other areas are developed. The absence of such a plan leaves nearly all areas exposed to unrestricted destruction and presents a serious danger that virtually none of today's natural areas will be permanently preserved.

I share Secretary Train's concern with the need to preserve natural areas and I know that the implementation of a detailed plan that would provide for the orderly development of coastal areas, including the preservation of areas of important ecological value, would be of great assistance to my department in its review of individual permit applications. While I believe that officials at all levels of Government must concern themselves with the protection of our environment and that Federal agencies with expertise in fish and wildlife areas can contribute a great deal to the planning function, the individual states are in the best position, in the initial instance, to formulate plans which balance the needs associated with population growth with the need to protect certain areas from residential and commercial development.

Although I know that the State of Florida is vigorously pursuing solutions to the problem of providing for orderly growth while preserving Florida's marine and wildlife resources and that the Trustees of the Internal Improvement Fund have already approved a number of reports recommending the establishment of a system of aquatic preserves and a comprehensive system of bulkhead lines, it is my understanding that Florida has not yet fully implemented its plans for the controlled development of its coastal areas. We are particularly concerned over the development of satisfactory policies to control the use of shallow areas between mean low and mean high water, where the underlying lands are in private ownership, but where filling operations are subject to Federal jurisdiction. We have a similar concern with submerged areas below mean low water which may be in private ownership as a result of conveyances from the State, or otherwise. Until Florida's plans for regulating the development of its

coastal areas are fully implemented, I believe that we at the Federal level will be required to proceed cautiously in our review of major permit applications which may have a significant impact on fish and wildlife values, or which may permanently and irrevocably alter coastal areas. While we will not suspend the processing of major permit applications, and may, in cases in which the general public interest clearly requires it, approve such applications, I believe all concerned Florida officials at the state, county, and municipality level, as well as those individuals and concerns contemplating development work requiring permits from the Army Corps of Engineers, should be aware that future applications will not be routinely approved. In some cases, processing may be suspended until Army officials can act with the assurance that permit approvals will not result in additional piecemeal steps in an unacceptable destruction of coastal resources.

In the past, developers have sometimes proceeded with the implementation of development plans in advance of the receipt of all necessary permits and have advanced their commitments to purchasers as an argument for the approval of Federal permit applications. This may reflect a need for increased cooperation to assure that developers are aware that both State and Federal permits may be needed prior to start of particular types of work. We are, of course, particularly concerned over the possibility that individual purchasers of home sites might be misled with respect to the character of the land in question or the date of anticipated dredging and filling activities. Developers should avoid making financial and other arrangements which assume the granting of major permit applications, since all such applications will, at the very least, be carefully reviewed at the Department of the Army level in Washington.

I believe that it would be useful to explore with your officials ways in which we can constructively cooperate in matters affecting the coastal area. Accordingly, I would appreciate it if you would have an appropriate representative contact Mr. Robert E. Jordan, III, my Special Assistant for Civil Functions. You may be assured that the Department of the Army, including the Corps of Engineers, appreciates the spirit of cooperation that has marked our relations in the past and looks forward to working with the State of Florida in that same spirit on problems of mutual interest in the future.

While this letter is prompted by the cases referred to earlier, which involve applications affecting Florida, we recognize that similar considerations apply elsewhere, and are surveying problems in other states as well.

Sincerely,

Stanley R. Resor

Stanley R. Resor
Secretary of the Army

DEC 4 1969

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT. CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE. FLORIDA 32201

SAJSE

15 February 1973

Regional Director
United States Department of the Interior
Bureau of Sport Fisheries and Wildlife
Peachtree-Seventh Building
Atlanta, Georgia 30323

Dear Sir:

Reference is made to your letter of 6 December 1972 concerning the Steffens-Buckingham Development on Bessey Creek, Martin County, Florida.

In our letter of 19 October 1972, we stated that in April 1969 we elected not to assert jurisdiction and so informed the developer. We also stated that a recent inspection of this development revealed that all work was completed. Therefore, by letter of 20 September 1972 we informed the developer that we do assert jurisdiction in Bessey Creek and that any additional work in or connected to Bessey Creek would require a Department of the Army permit.

We concur with your statement that, "....no future project involving upland canals should be connected to navigable waters without a Department of the Army permit." However, it should be noted that this office did not previously assert jurisdiction in many areas, such as Bessey Creek, which were off of the main navigation channels, since at that time the benefits derived from asserting Federal jurisdiction in such areas would have been disproportionate to the costs to the public. As you are aware, we are extending our efforts into areas such as Bessey Creek, but that extension can hardly be retroactive.

Let us assure you that if this work was being accomplished today without benefit of a Department of the Army permit, we would take appropriate action to stop the work. As further information, we do inform upland canal developers that their projects will require Department of the Army permits and that it is considered a violation of Federal laws if plugs in upland canals are removed.

We hope that the above information has clarified this matter. If additional information or clarification is required, please notify us.

Sincerely yours,

Gail C. Green

GAIL C. GREEN
Chief, Operations Division

(31)

AIRMAIL

December 6, 1972

District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This letter is in regard to the Staffens-Buckingham Development on Bassey Creek, Martin County, Florida. In a July 24, 1972, letter, the Bureau reported this project to your office as an apparent violation of the River and Harbor Act of 1899. In a letter dated October 19 the Chief of your Operations Division stated that the Corps of Engineers would not assert jurisdiction, and informed the developers that no permit would be required.

Water quality in many residential canal systems has been found to be extremely poor. This potential for poor water quality causes us to be very adamant in our position that no future project involving upland canals should be connected to navigable waters without a Department of the Army permit. Recent amendments published in the Federal Register, Volume 37, No. 176, more completely define navigable waters. In view of these new administrative procedures, we would expect that should a similar project now be constructed, your decisions would be different. Therefore, we recommend that the Corps of Engineers serve notice to developers that future connections of upland canals to navigable waterways will require a Department of the Army permit.

We would appreciate your giving these recommendations your immediate attention, and look forward to continued cooperation.

Sincerely yours,

Deputy Regional Director

cc:
DRRS, Vero Beach, Fla.

Vero Beach:JFScott:hr

20-733 O - 73 - pt. 1A - 50

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SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
2. C. L. Hall

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635—16—71548-11 347-108 G70

July 24, 1972

AIR MAIL - CERTIFIED

District Engineer
U.S. Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32201

Dear Sir:

This is to confirm a telephone call by our Vero Beach, Florida, field office to Dennie Cooke, of your staff, at 9 a.m. on July 19, 1972, regarding an apparent illegal dredge and fill operation that was observed and photographed on July 6, 1972.

The project is located at the head of Bessie Creek, Section 1, Township 38 South, Range 40 East, Martin County, Florida, tributary to St. Lucie River, estuary. The developer, Stefford Buckingham Development Corporation has dredged Dennie Creek to create waterways and waterfront property for the Rustic Hills housing development.

We understand that a Department of the Army permit has not been issued for this project. If a permit is required, the continuation of these unpermitted activities constitutes a violation of Federal law and immediate action is warranted by responsible agencies.

Therefore, the Bureau of Sport Fisheries and Wildlife recommends that the Corps of Engineers take the following action:

1. Issue a cease and desist order to stop this apparently illegal work;

2. Visit the site as soon as possible to verify our findings;

3. Inform the developer of the necessity of obtaining a Department of the Army permit; and,

4. Advise this office and the U.S. Attorney, Miami, Florida, if the activity is legal or if a cease and desist order has been issued.

If we can be of further assistance on this matter, please let us know.

Sincerely yours,

/s/ Jack E. Roberts

Deputy Regional Director

cc:
Div. of Game and Fresh Water Fish, Tallahassee, Fla.
U.S. Attorney Robert W. Rust, Miami, Florida
EPA, Permits Branch, Atlanta, Ga.
EPA, Enforcement Branch, Atlanta, Ga.
DRBS, Vero Beach, Fla.
BSF&W, Washington, D.C. (RB)

VERO BEACH:JFScott:mj

cc:
Department of Natural Resources, Tallahassee, Fla.
Department of Air & Water Pollution Control, Tallahassee, Fla.
Trustee of the Internal Impr. Trust Fund, Tallahassee, Fla.

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON, TEXAS 77550

SWGCO

18 September 1972

Regional Director
Bureau of Sport Fisheries and Wildlife
P. O. Box 1306
Albuquerque, New Mexico 87103

Dear Sir:

This is in response to your letter of 5 September 1972 concerning alleged illegal work being performed in Galveston by Mar-La Properties on land adjacent to the channel serving Lake Madelaine.

The work in question consists of construction of an apartment complex called Marina LaFitte located on the north side of Jones Road. In connection with the work two canals about 500 feet long have been constructed to provide marina facilities for the complex. As stated in your letter, one canal has been completed and is connected with the channel serving Lake Madelaine. The other channel has been excavated and construction of the timber bulkheads is underway.

Lake Madelaine is an artificial lake constructed by private interests for the Havre LaFitte housing development. The channel connecting the lake with Offatts Bayou was formally a drainage ditch and was enlarged to some degree so that recreation vessels could enter the private lake. Department of the Army permits were not issued for the improvements.

Although the channel and the lake are navigable to some degree, the Corps has never formally determined these waters to be navigable. Considering this, it would not be appropriate at this time to declare the waters to be navigable and then institute legal action against Mar-La Properties. We will, however, in our next determination of navigable waters, include these two bodies of water and will, in the future, have regulatory control over such operations. In connection with such a determination, we issue a publication listing the various navigable bodies of water within the District. I am inclosing the most recent publication.

SWGCO
Regional Director
Bureau of Sport Fisheries and Wildlife

18 September 1972

Your interest in reporting this matter is appreciated.

Sincerely yours,

Nolan C. Rhodes

NOLAN C. RHODES
Colonel, CE
District Engineer

1 Incl
List of Navigable Waters

Copy furnished: (w/incl)
Mr. Don Moore
National Marine Fisheries Service
4700 Avenue U
Galveston, Texas 77550

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
CUSTOM HOUSE—2 D & CHESTNUT STREETS
PHILADELPHIA, PENNSYLVANIA 19106

IN REPLY REFER TO
NAPOP

13 OCT 1972

Mr. Richard E. Griffith, Reg. Director
U. S. Fish and Wildlife Service
Bureau of Sport Fisheries & Wildlife
U. S. Post Office & Court House
Boston, Mass. 02109

Dear Dick:

We seem to have arrested, through your efforts and ours, and with the excellent co-operation of the Justice Department, all consequential intrusions onto the wetlands within the Philadelphia District. We now regularly fly over the Southern part of New Jersey and Delaware to police against new starts. My purpose in writing you is not to dwell on our successes but rather to inform you of problems we are encountering or foresee in our efforts to protect wetlands; thereby, you may perhaps influence some assistance.

First, the pesky problem continues that we, at field level, are not allowed to recommend or suggest action to the local U. S. Attorneys. We are required to send cases up through Corps' channels and back out to the field through U. S. Justice Department Channels. This "layering" frustrates action. The Reuss Committee is aware of this; they pontificate on this time consuming procedure; but they have not been effective in correcting it. (Despite the regulation, we do work with the U. S. Attorneys in a sub rosa fashion to keep things going.)

A more significant problem is that which relates to keeping the wetlands within the jurisdiction of the River and Harbor Act of 1899. Counsel for the developers are commencing to challenge our jurisdiction over wetlands. They have learned that:

a. Meadowland or tidal marsh is generally one foot above mean high water.

NAPOP
Mr. Richard E. Griffith, Reg. Director
U. S. Fish and Wildlife Service

b. Courts in the past held that on the Atlantic Coast the jurisdiction of the River and Harbor Act of 1899 extends to the mean high water line.

The above contentions, which have considerable validity, limits our jurisdiction to the tidal ditches in these marshes. Frequently, there are expansive areas of tidal marshes without tidal ditches.

The courts, in the past, settled on the mean high water line as extent of our jurisdiction on the Atlantic Coast as the government never contested for jurisdiction beyond the mean high water line on the Atlantic Coast. On the Pacific Coast the jurisdiction of the River and Harbor Act extends to the mean of the higher of the high waters or 1 foot above mean high water. This may suggest that there is room for judicial discretion.

Our Office Chief of Engineers has taken the stand in the Federal Register and in our regulations that the extent of our jurisdiction on the Atlantic Coast is limited to mean high water. I attempted but could not influence the Chief of Engineers in contending that all tidal marsh is within the purview of the River and Harbor Act of 1899. In effect this would say all land which is frequently flowed by the tide would come within our purview. The question of course is whether the courts would support the expanded jurisdiction I suggest. I believe there is a good chance they would if such a contention were made. The courts have liberally interpreted the extent of jurisdiction of the River and Harbor Act in the past. I believe we should contend that jurisdiction of the River and Harbor Act extends "to all the intermediate areas between fast lands and water, which are commonly referred to as marsh lands, provided that such lands when in their natural state are endowed with unique characteristics which are derived from the contiguous body of water, and which characteristics identify the marshland as a part of the eco-system of the contiguous waterway".

I hope the above is clear. We need the expanded definition on our jurisdiction. I cannot get help from O.C.E. on this. Perhaps your Counsel may have some suggestion on how to overcome our problem so that we may continue to assert jurisdiction on marsh lands above the mean high water mark.

Sincerely yours,

LEWIS CACCESE
Chief, Operations Division

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF DELAWARE
FEDERAL BUILDING
WILMINGTON, DELAWARE 19801

AREA CODE 302
658-6911, EXT. 345

FTS 302-658-6345

September 15, 1972

SEP 18 RECD

Mr. Henry S. Reuss
Chairman
Conservation and Natural
Resources Subcommittee
Rayburn House Office Building
Room B-349-C
Washington, D.C. 20515

Dear Mr. Reuss:

Thank you for your letter of August 28, 1972, requesting my opinion on the matters raised therein. I have consulted with my staff, and they and I agree with each of the principal recommendations set forth on page 5 of House Report 92-1323. Our office is a small office (4 attorneys) but we have had an ever increasing number of Title 33, U.S.C. §407 matters brought to our attention. We feel that in order to better safeguard our environment, it is necessary that the Refuse Act of 1899 be vigorously enforced in each and every instance, regardless of whether the case is an emergency or non-emergency matter.

Negotiations with polluters have two bad side effects: (1) delay of the length of time between the offense and its resolution; and (2) deprive the public and possible polluters of the salutary effect of seeing cogent and prompt action taken against polluters. Negotiations may have a place in plea bargaining, but not in the decision as to whether or when a suit should be filed.

To properly implement the Act, it is essential that expert personnel in adequate numbers be hired to conduct an effective Refuse Act program.

To establish a broad-based attack on polluters, each United States Attorney should be able to utilize all available sources, not only the Corps and EPA. If the information is ripe, then the decision to prosecute can issue forthwith from the United States Attorney's Office. Of course, the Corps and/or EPA can and should be utilized if further development of a case is necessary prior to the institution of criminal or civil action. However, we do not feel it advisable to mandatorily proceed through those agencies.

The withholding of information regarding polluters can only serve to minimize the extent of the problem in the eyes of the public and to deprive Congress and the American people of information necessary to the formation of a thorough and accurate understanding of the pollution problem. For those reasons, we heartily agree with recommendations D through F.

We feel that the 1899 Act empowers the Corps to revise its April, 1971, regulations regarding Refuse Act permits. A prompt revision of those regulations would best serve the purpose of that Act.

Regarding House Report No. 92-1323, we have found that the Corps of Engineers has been helpful and vigorous in assisting us, expecially in suits dealing with illegal dredging and filling of tidal marshlands. We would, however, agree that the requirement of a permit application demonstrably showing that the proposed project be in accord with the public interest is both necessary and desirable.

We have found that the Corps' policy of prohibiting district engineers from referring cases of §10 violations directly to us has seriously delayed our filing of civil and criminal actions. By the time the case is brought to our attention, it is conceivable that the illegal work has already been completed, although no permit application has been filed. In such a case, the government is boxed into an unenviable corner--arguing for a restoration of the land prior to a permit application being denied. In addition, the project lays completed

while the matter is being litigated. We feel that prompt and forceful action must be taken as soon as a violation of the 1899 Act is clearly provable. Such action discourages other possible law breakers and keeps environmental harm down to a minimum. For these reasons, we would most strenuously advocate direct referral of §10 cases to the United States Attorney.

We are in complete agreement with the principal recommendations of the committee as set forth on page 6 of the report. In particular, recommendation F should be adopted by the Corps. We have found that developers attempt to justify present illegal dredging, filling, and bulkheading operation in tidal wetlands by the device of presenting an old permit, which allowed the connection of an artifically constructed lagoon to a naviagable water.

Hopefully, the attitude expressed by the 5th Circuit in the case of Bankers Life v. North Palm Beach (4 E.R.C. 1474), will become the attitude of the Corps. In any event, the Corps should require a permit for every ongoing fill, construction and any other work being done in navigable waters, whether or not "commenced" before that date.

Sincerely yours,

Norman Levine
United States Attorney

NL/mm

PART E.—PRINCIPAL SUBCOMMITTEE CORRESPONDENCE WITH THE CORPS OF ENGINEERS URGING PROMPT PUBLICATION OF REGULATION TO PROTECT WETLANDS[1]

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
RAYBURN HOUSE OFFICE BUILDING,
Washington, D.C., May 5, 1972.

Lt. Gen. F. J. CLARKE,
Chief of Engineers, Department of the Army,
Washington, D.C.

DEAR GENERAL CLARKE: On January 18 of this year, the Corps submitted to the Office of Management and Budget proposed regulations dealing with the authorization by permit of dredge and fill activities in the "wetlands" portion of the navigable waters of the United States. We commend you for taking this progressive step, which we had recommended in our letters of November 12, 1971, and January 21, 1972, to the Chairman of the Council on Environmental Quality (see Part 2 of our Subcommittee Hearings on Mercury Pollution and Enforcement of the Refuse Act of 1899, pp. 1252–1266).

It is our understanding that the original intention was to announce these regulations at the time of the President's 1972 environmental message. Because of objections by the Commerce Department, however, the regulations were not announced or published. We understand that your agency and the Council on Environmental Quality fully refuted the contentions of the Commerce Department, but the regulations have still not been published.

We would appreciate it if you would state what is the current status of these proposed regulations and when the Corps expects to publish them.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., January 5, 1973.

Hon. ROBERT F. FROEHLKE,
Secretary of the Army,
The Pentagon, Washington, D.C.

DEAR SECRETARY FROEHLKE: Nearly a year ago, the Corps of Engineers prepared and submitted to the Office of Management and Budget a draft of proposed regulations dealing "with authorization of certain activities undertaken in the 'wetlands' portion" of navigable waterways. (See draft of proposed regulations and related correspondence in Hearings, "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca", pp. 702–706.)

The then Director of the OMB, Mr. Caspar W. Weinberger, in a July 25, 1972, letter to us concerning these draft regulations, said:

"At the present time, the Department of the Army is reviewing a policy position and considering changes which, if adopted, will be reflected in proposed revised regulations of the Corps of Engineers relating to wetlands. The agency comments and policy recommendations on certain possible revisions of the regulations, which OMB solicited as part of its interagency coordination functions, were forwarded to the Department of the Army for its internal use during this review. These agency remarks supplement the variety of opinions already available within that department and bring into sharper focus the ramifications of different policy positions. When, after due consideration of all viewpoints, the Department of the Army adopts a final policy position, public comments will then be solicited if a revision of the regulations is proposed."

[1] The regulation was finally published on May 10, 1973, (See pp. 209–215 of this hearing and part B of this appendix.)

Our Committee on Government Operations, in its report of August 10, 1972 (H. Rept. No. 92–1323) entitled "Increasing Protection for Our Waters, Wetlands, and Shorelines: The Corps of Engineers", unanimously recommended:

"The Corps of Engineers should promptly publish its presently prepared regulations concerning authorization of work in the 'wetlands' portion of navigable waterways."

In our August 15, 1972, letter, we called your attention to this and several other Committee recommendations and asked that you advise us of your "timetable" for carrying out these recommendations.

In his reply of September 18, 1972, the Chief of the Corps, General Clarke, said:

"I believe that most of the specific points and recommendations contained in your letters are met by two revised regulations recently drafted by my office. The regulation defining the navigable waters of the United States as currently regulated by the Department of the Army under its statutory authorities was finalized and published in the Federal Register on 9 September 1972, 37 F.R. 18289. The other revised regulation prescribing policy, practice, and procedure for permits under Section 10 for structures and work in or affecting navigable waters of the United States has been completed in draft including revision of procedures relating to letters of permission, and was circulated to Corps Division and District offices for comment on 1 August 1972. These field office comments have been received and reviewed, and a final draft of this regulation should be ready for Departmental clearance and publication in the Federal Register for public comment within three weeks. I will furnish you a copy of the final draft when ready, and will welcome your comment on any of its provisions.

"When the Section 10 regulation is finally published, Corps Districts will have sufficient guidance to assure uniform enforcement of Corps statutes and maximum protection of the nation's resources."

Presumably, the draft regulation circulated on August 1 includes the Corps' proposed wetland regulations.

In our letter of October 3, 1972, to you, we asked to "have an opportunity to review and comment" on the draft regulation "circulated to Corps" offices on August 1, 1972.

Mr. Charles R. Ford, Chief, Office of Civil Functions of your office, in his reply of October 20, 1972, refused to comply with our request. He said:

"It is intended to publish the draft regulation in the Federal Register for comment prior to its final promulgation. Publication for comment will be effected at such time as Administration approval is obtained."

The report of the Committee on Governmental Operations has shown the immediate need for these regulations. General Clarke agreed in his September 18 letter that they are needed. Indeed, he said they "should be ready for Departmental clearance and publication * * * within three weeks." Later, Mr. Ford said that publication must await "Administration approval."

It appears that the proposed Corps' regulations are being held up either by your office or by the OMB.

We think a year is too long for the public and Congress to wait to obtain "Departmental" and "Administration approval" of regulations designed to "assure uniform enforcement of Corps' statutes and maximum protection of the nation's resources". We therefore request that these proposed regulations be published for public comment by January 19, 1973.

If they are not published by then, please explain to us why your Department and the Administration are continuing to withhold "approval" of these needed regulations. Also, please provide to us, pursuant to 5 U.S.C. 552(c), a copy of the latest version of these proposed regulations and a copy of all agency comments received thus far by your Department and/or the Corps on the draft versions of these regulations.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.
GUY VANDER JAGT,
Ranking Minority Member, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY,
OFFICE OF THE UNDER SECRETARY,
Washington, D.C., January 19, 1973.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources, House of Representatives, Washington, D.C.

DEAR MR. REUSS: This is in reply to your letter of 5 January 1973, signed also by Mr. Vander Jagt, inquiring as to the status of regulations being revised by the Corps of Engineers, which in part will contain the uniform policy and procedures for protection of wetlands.

As you point out, the Department of the Army had expected to publish the regulation in the Federal Register for comment by autumn of last year. However, these expectations were overtaken by the enactment of the Federal Water Pollution Control Act Amendments of 1972, P.L. 92–500; the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92–532; and the Coastal Zone Management Act, P.L. 92–583.

The Chief of Engineers advises me that his analysis of these recent enactments has been completed insofar as they impact on the proposed revision of his regulation, and extensive revision of the preliminary draft is necessary. For example, Section 404 of Title IV, Section 2 of P.L. 92–500 has new procedural requirements that affect all parts of the regulation. The Chief of Engineers has his staff preparing a new revision of the regulation and has given the matter high priority.

The wetlands policy portion of the regulation, as drafted in August 1972, may not require substantial change; therefore, I have inclosed a copy of the document as you requested. You may be assured that I share your interest in preserving our natural resources, and will see that you receive a draft of the entire regulation when it is in final form and ready for publication in the Federal Register and circulation to other federal agencies.

Sincerely,

CHARLES R. FORD,
Chief, Office of Civil Functions.

Enclosure.

PRELIMINARY DRAFT—REVISED WETLANDS POLICY, AUGUST 30, 1972

(Excerpted paragraph from Regulation 1145–2–303 regarding permit authorities).

6. (c) *Effect on Wetlands*

(1) Wetlands are those land and water areas subject to regular innundation by tidal, riverine, or lacustrine flowage. Generally included are inland and coastal shallows, marshes, mudflats, estuaries, swamps, and similar areas in coastal and inland navigable waters. Many such areas serve important purposes relating to fish and wildlife, recreation, and other elements of the general public interest. As such, they constitute a productive and valuable public resource. The alteration or destruction of those areas, or their use for purposes not dependent on wetland resources, is detrimental to the public interest.

(2) Wetlands considered to perform functions important to the public interest include:

(a) Those which serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(b) Areas set aside for study of the aquatic environment or as sanctuaries or refuges;

(c) Land or water contiguous to areas listed in (a) and (b) above, the destruction or alteration of which would effect detrimentally the natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics of the above areas; and

(d) Areas which are significant in shielding other wetlands from wave action, erosion, or storm damage. Such areas often include barrier beaches, islands, reefs and bars.

(3) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas, in response to new applica-

tions, and in consultation with the Regional Representative of the Department of the Interior, to assess the cumulative effect, of activites in such areas.

(4) An application involving wetland areas described in subparagraph (2) will be evaluated in accordance with the general provisions of subparagraphs 5d-e, and in addition:

(*a*) The potential loss of the values detailed elsewhere in this paragraph will be among the factors considered; and

(*b*) Close examination will be made of those proposals which are likely to result in irrevocable commitment of wetland resources.

(5) In accord with the policy expressed in paragraph 5f and with the Congressional policy expressed in the Estuary Protection Act, P.L. 90-454, state regulatory laws or programs for classification and protection of wetlands will be given great weight.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., January 29, 1973.

Hon. ROBERT F. FROEHLKE,
Secretary of the Army, The Pentagon,
Washington, D.C.

DEAR SECRETARY FROEHLKE: On January 19, 1973, Mr. Charles R. Ford of the Office of the Under Secretary of the Army replied to our letter of January 5 concerning several long-delayed Corps of Engineers proposed regulations which have not yet been published.

I.

Mr. Ford noted:

"As you point out, the Department of the Army had expected to publish the regulation in the Federal Register for comment by autumn of last year. However, these expectations were overtaken by the enactment of the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500; the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532; and the Coastal Zone Management Act, P.L. 92-583.

"The Chief of Engineers advises me that his analysis of these recent enactments has been completed insofar as they impact on the proposed revision of his regulation, and extensive revision of the preliminary draft is necessary. For example, Section 404 of Title IV, Section 2 of P.L. 92-500 has new procedural requirements that affect all parts of the regulation. The Chief of Engineers has his staff preparing a new revision of the regulation and has given the matter high priority."

We recognize that the law is constantly changing and that the Corps' regulations should reflect those changes. But the statutes referred to by Mr. Ford were all enacted in October 1972, more than 3 months ago; yet, the various regulations are still not published.

One consequence of the delay relates directly to a recommendation by our Committee in its report of August 10, 1972 (H. Rept. 92-1323), entitled "Increasing Protection for Our Waters, Wetlands and Shorelines: The Corps of Engineers". That report noted that the Corps' present "cumbersome" method of indirect referrals of violations of section 10 of the River and Harbor Act of 1899 has resulted in "irreparable harm" to valuable wetlands resources. The Committee's report therefore recommended that the referral procedure be revised to allow District Engineers to contact U.S. Attorneys directly. In response to this recommendation, the Chief of Engineers, General Clarke, wrote to us on September 16, 1972, as follows:

"When the Section 10 regulation is finally published, Corps Districts will have sufficient guidance to assure uniform enforcement of Corps statutes and maximum protection of the nation's resources. This, in furtherance of the position taken in my letter to you dated 18 July 1972, *will permit consummation of an agreement with the Department of Justice for direct referral of cases by Division and District Engineers to United States Attorneys.*" (Emphasis supplied.)

We continue to receive complaints from the Interior Department, from citizens and even from field personnel of the Corps of Engineers, that the Corps' referral procedure is not working effectively and efficiently. But as General Clarke noted, this procedure will not be revised until the regulations, now being held up by the Corps and OMB, are "finally published". This is certainly a frustrating situation that is detrimental to the public interest.

II.

Enclosed with Mr. Ford's letter was a copy of two pages, entitled "Preliminary Draft Revised Wetlands Policy", dated "30 Aug 1972", and containing paragraph 6.c(1) through (5) of Regulation 1145–2–303. The copy sent to us is obviously incomplete since it refers to provisions in subparagraphs 5d-e and 5f which were not attached thereto.

We are distressed that the proposed draft regulations appear to have been largely emasculated and rendered an empty shell of the draft sent to the Office of Management and Budget in January 1972, and published in the Hearings of December 10 & 11, 1972 entitled "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca", pp. 702–705.

The January 1972 draft established a presumption that "wetlands constitute a valuable and productive resource the preservation of which is in the public interest," unless it is "clearly shown otherwise". That draft stated:

"(b) The purpose of a proposed structure or work will be examined *with a view towards avoiding siting in wetland areas. If that purpose is not dependent on waterfront access, or can be satisfied by the use of an alternate site or by use of existing public facilities, the application will ordinarily not be granted.* The applicant will be required to *demonstrate* that a feasible alternate site does not exist; the inability to finance or acquire an alternate site *is not* a factor in the determination of feasibility." (Italic supplied.)

This key provision in the January 1972 draft is consistent with Section 2.B.(2)a. of the Fish and Wildlife Service's recently developed and circulated "Navigable Waters Handbook" which states (p. 5):

"*Where the proposed work is non-water dependent* and alternative upland sites are available, *the Service will insist on the use of such upland sites irrespective of costs* or other burdens on the sponsor of the proposed work.

"For water dependent works, *the Service will insist on minimizing the loss of or damage to productive wetlands and shallows,* their fish and wildlife, and human uses.

"*The Service will insist on guarantees that the work is actually carried out as promised* and/or as required by conditions of the permit, provisions of law, or agreements formalized in writing." (Italic in original.)

But this important provision was mysteriously omitted from the August 1972 draft.

The latest version quite properly finds that wetlands "constitute a productive and valuable public resource", rather than just stating this fact in terms of a rebuttable presumption. It also finds that their "alteration or destruction . . . or use for purposes not dependent on wetland resources, is detrimental to the public interest". But, as we noted above, the August 1972 draft fails to tell the Corps' District Engineers, the permit applicant, and the public that, as a result of these findings, permit applications for work in wetland areas "will ordinarily not be granted" where the purpose is (a) "not dependent on waterfront access", or (b) "can be satisfied by the use of an alternative site or by use of existing facilities".

It is clear that the long delay in issuing the draft wetland regulations has been detrimental to the public interest. However, the August 1972 draft wetlands regulation must be substantially revised (i) to include the above quoted paragraph (b), and (ii) to require, even in the case of water-dependent works, the applicant to show that the work is in the public interest, that there is no prudent and feasible alternative to utilizing the particular wetlands site, and that the applicant will minimize loss and damage to the wetlands area. If the regulation is not so revised, we believe that it would be largely rhetoric without substance, and therefore would mislead the public into believing that it will result in some added protection for the Nation's valuable and irreplaceable wetlands.

III.

Our letter of January 5, 1973, requested that you promptly provide to us a copy of *all* Federal agency comments received thus far by your Department and/or the Corps on the various draft versions of the wetland and other regulations mentioned in your January 19 letter to us. Mr. Ford's letter overlooked this request. We repeat the request.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.
GUY VANDER JAGT,
Ranking Minority Member, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY.
OFFICE OF THE UNDERSECRETARY,
Washington, D.C., March 22, 1973.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources,
House of Representatives, Washington, D.C.

DEAR MR. REUSS: In the absence of Secretary Froehlke I am taking the liberty of responding to your letter of January 29, 1973. This letter will also further clarify my letter of January 19th concerning the status of regulations being revised by the Corps of Engineers to include, among other changes, a policy statement relative to permits for work in wetland areas.

A final draft of the regulation will be published shortly in the Federal Register. I will provide you with a copy of this draft as soon as it is ready for publication and will provide you with all comments received thereafter as a result of publication of the proposed regulation.

With regard to your request for comments received by the Department of the Army or by the Corps of Engineers last year on earlier draft versions of the regulation, Mr. Weinberger in his letter to you of July 25, 1972, noted that these comments were solicited by the Office of Management and Budget and were forwarded to the Department of the Army for its internal use only. Accordingly, I do not have authority, under standard inter-agency procedures, to release these comments.

A copy of the regulation has been furnished to the Department of Justice, requesting initiation of discussion on delegation of authority to United States Attorneys and Corps District Engineers for direct referral of cases at field level. In the interim, direct referral on an ad hoc basis is being authorized, and this procedure is avoiding needless administrative delays.

Sincerely,

CHARLES R. FORD,
Chief, Office of Civil Functions.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., March 1, 1973.

Hon. ROGERS C. B. MORTON,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: Attached for your review and comments is a draft of revised Section 209.120, Permits for Activities in Navigable Waters and Ocean Waters, of Title 38, Code of Federal Regulations. A copy of this draft has this date been sent to the Office of Management and Budget (OMB) for clearance to publish it in the Federal Register for public comment. It is essential that the draft be so published at the earliest date; therefore, we request that you inform OMB by 8 March 1973 of your concurrence with the publication for public comment of this draft unless you identify major problems which would preclude such publication. We will, of course, be in contact with your staff for coordination purposes during the final drafting of the regulations to this end we welcome any comments and suggestions you may have on this draft whenver you complete your review.

This revision is necessary for two main purposes. The first is to clarify guidance to field offices in order to insure more uniform exercise of regulatory authority. To this end policies and procedures which have developed in practice over the past several years since the public interest criteria was adopted and since the National Environmental Policy Act came into being have been incorporated. The second purpose of the revision is to incorporate the authorities and requirements of the legislation enacted in October 1972; The Federal Water Pollution Control Act Amendments of 1972; The Marine Protection, Research and Sanctuaries Act of 1972; and the Coastal Zone Management Act of 1972.

The hearing regulations are being prepared. They have been assigned Section 209.132 of Title 33 and are incorporated by reference in the inclosed draft regulation. The three appendices to the draft regulation will also be published separately.

The paragrpahs of this draft regulation of primary interest to the Department of the Interior are:

(e)(3) Permit Activities of other Federal Agencies;
(f) General Policies for Evaluating Permit Applications;

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(g)(3) Effect on Wetlands;
(g)(4) Fish and Wildlife;
(g)(6) Historic, Scenic, and Recreational Values;
(g)(9) Outer Continental Shelf;
(g)(10) Effect on Limits of the Territorial Sea;
(g)(11) Canals and Other Artificial Waterways Connected to Navigable Waters;
(g)(12) After-the-Fact Authorizations;
(i) Processing Applications for Permits;
(j) Public Notice and Coordination with Interested Parties; and
(q) Supervision and Enforcement.

Sincerely,

JAMES L. KELLY,
Brig. Gen., USA,
Deputy Director of Civil Works.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
RAYBURN HOUSE OFFICE BUILDING,
Washington, D.C., March 27, 1973.

Hon. ROBERT F. FROEHLKE,
Secretary of the Army,
Washington, D.C.

DEAR SECRETARY FROEHLKE: Our Subcommittee's letter to you dated January 29 requested copies of the comments which various Federal agencies made on the Corps of Engineers' draft of regulations concerning wetlands and other matters, and sent to the Office of Management and Budget in January 1972. Mr. Charles R. Ford, Chief, Office of Civil Functions, of your Department responded on March 22 that he lacks "authority, under standard agency procedures" to release those comments to us.

Please advise us, by April 6, 1973, the statutory basis for your Department's refusing to supply these interagency comments to this Subcommittee. Also, please provide to us by that date a copy of the documents which set forth the "standard interagency procedures" cited by Mr. Ford.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY,
OFFICE OF THE UNDER SECRETARY,
Washington, D.C., April 17, 1973.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources, House of Representatives, Washington, D.C.,

DEAR MR. REUSS: The Secretary of the Army has asked me to reply to your letter of March 27, 1973, regarding your earlier correspondence. In that letter, you ask to be advised of the basis for the statement in my letter of March 22, that the Army lacks "authority, under standard inter-agency procedures" to release the requested comments.

As I noted in my earlier letter, the only comments received by the Army on earlier draft versions of the regulations currently under preparation were those to which Mr. Caspar Weinberger, then Director of the Office of Management and Budget (OMB), referred in his letter to you of July 25, 1972. In his letter, Mr. Weinberger stated, "The agency comments and policy recommendations on certain possible revisions of the regulations, which OMB solicited as part of its interagency coordination functions, were forwarded to the Department of the Army for its internal use during this review."

In that same letter, Mr. Weinberger responded to your request for these comments by stating:

"[I]nternal exchanges of opinion within the Executive Branch have traditionally never been released in order to protect and maintain the free and frank expressions of views essential to the development of policy positions. . . . Since your re-

quest for agency comments relates to the preliminary exchanges of opinion prior to adoption of a final agency position, it would, in accordance with both theory and practice, be inappropriate for us to make them available."

The requested comments are not records originated by the Army. The Office of Management and Budget furnished them to the Army for its internal use only, and has not authorized the Army to release them.

I hope that this letter will clarify for you the basis for our Department's action on this matter. If you wish to pursue the matter of these comments further, you should again contact the Office of Management and Budget.

Sincerely,

CHARLES R. FORD,
Chief, Office of Civil Functions.

[NOTE.—See related documents regarding preparation of an Executive order to protect wetlands. The order was never issued. The documents follow:]

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
BUREAU OF SPORT FISHERIES AND WILDLIFE,
Washington, D.C., February 27, 1970.

Memorandum To: Solicitor, through Commissioner of Fish and Wildlife, Assistant Secretary for Fish and Wildlife, Parks, and Marine Resources.
From: Director.
Subject: Executive order to implement section 4 of the National Estuary Protection Act (Public Law 90–454).

Attached is a draft of the above executive order. We believe it is particularly timely to process this draft for approval now, not only because of the pending release of our estuary report prepared in response to requirements of P.L. 90–454, but because of the several related actions recently taken by the President. His State of the Union and Environmental Messages are pertinent, of course, and his February 4 signing of Executive Order 11507 is especially so.

The latter recent order takes care of the air and water quality aspects of Federal activities in estuaries as well as those of other areas of the Nation, but it does not comprehend the entire gamut of environmental concerns of Federal activities in the estuaries as required by Section 4 of P.L. 90–454. Copies of Executive Order 11507, the President's statement made upon signing that order, and P.L. 90–454 are attached for your ready reference.

It is notable that the President anticipated further actions in this field in his statement made on signing Executive Order 11507. He said: "There are other Federal activities, of course, which affect the environment other important ways. I have asked the Environmental Quality Council to maintain surveillance over such activities and to recommend any further actions which may be needed."

We believe the quality of the environment in the Nation's estuaries is one such area of needed increased attention in Federal activities which, although already recognized in law, has not yet been explicitly and fully addressed by executive action.

Executive Order 11507 contains much language which is appropriate to the subject of the present draft, so that, to the extent applicable, its language has been adopted or adapted for the present purpose.

In view of the above, we request that your Office carry forward the further processing required to gain approval of the draft executive order.

JOHN S. GOTTSCHALK.

DRAFT—EXECUTIVE ORDER ——

PROTECTION, CONSERVATION, AND RESTORATION OF ESTUARIES IN THE USE AND DEVELOPMENT OF WATER, LAND, AND OTHER RESOURCES

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Fish and Wildlife Coordination Act (16 U.S.C. 661), Federal Water Pollution Control Act, as amended (33 U.S.C. 466), the National Estuary Protection Act (Public Law 90–454, approved August 3, 1968), and the National Environmental Policy Act of 1969 (Public Law 91–190, approved January 1, 1970), it is ordered as follows:

SEC. 1. *Policy.* It is the intent of this order that the Federal Government in planning for, assisting, licensing, constructing, operating and maintaining works

of improvement and facilities for the use and development of water, land, and other resources through any of its agencies shall give consideration to the Nation's estuaries and their living, scenic, other natural and esthetic resources, as well as to their importance for urban, commercial, and industrial developments and national growth.

SEC. 2. *Definitions.* As used in this order:

(a) The term "Secretary" shall mean the Secretary of the Interior.

(b) The term "agencies" shall mean the departments, agencies, and establishments of the executive branch.

(c) The term "covered activities" shall mean all planning, assisting licensing, constructing, operating, and maintaining works of improvement and facilities for any purpose, including all types of water and land alteration, modification, improvement, or development affecting estuaries or their resources within the Coastal States and not otherwise covered by Executive Order 11507.

(d) The term "planning" shall mean reconnaissance, plan formulation, and detailed design studies and any activities or reports related thereto.

(e) The term "assisting" shall mean the provision of scientific, engineering, technical, planning, design and other advisory services, and aid through financial grants, sharing of costs, and gifts of goods, services, land and interests in land.

(f) The term "licensing" shall mean the issuance of licenses, permits, and leases of any kind by a Federal agency, including, but not limited to, the navigation permits issued by the Department of the Army, rights-of-way permits issued by the Department of the Interior, special-use permits issued by the Department of Agriculture, and outer continental shelf leases issued by the Department of the Interior.

(g) The term "estuaries" shall mean the estuaries and without limitation coastal marshlands, bays, sounds, seaward areas, lagoons, and land and waters of the Great Lakes.

(h) In the phrase "estuaries and their resources," the term "their resources" shall mean all manner of renewable and nonrenewable resources involved in the public interest, including, but not limited to, natural, living, esthetic, scenic, recreational, natural area, open space, historic, archeologic, mineral, land, and water resources.

(i) The term "Coastal States" shall mean the thirty States bordering the Oceans and the Great Lakes, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

SEC. 3. *Responsibilities.* (a) Heads of agencies shall, with regard to all covered activities under their jurisdiction:

(1) Maintain review and surveillance to insure that standards set forth in Section 4 of this order are met on a continuing basis.

(2) Consult with the Secretary concerning the best means and methods for protecting, conserving, and restoring estuaries and their living, scenic, other natural and esthetic resources in relation to covered activities.

(3) Develop and publish procedures, within six months of the date of this order, to ensure that the covered activities under their jurisdiction being or to be conducted within estuaries or which may be reasonably foreseen to relate to or affect estuaries or their resources are in conformity with this order. In the preparation of such procedures there shall be timely and appropriate consultation with the Secretary.

(b) The Secretary shall provide leadership in implementing this order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this order.

(c) The Council on Environmental Quality shall maintain continuing review of the implementation of this order and shall, from time to time, report to the President thereon.

SEC. 4. *Standards.* (a) Heads of agencies shall ensure that all covered activities under their jurisdiction meet the following requirements:

(1) Works and facilities not required to be located in or on estuaries are planned for and located on upland sites where they will have no significant adverse impact on estuaries or their resources insofar as possible.

(2) Works and facilities required to be located in or on estuaries are designed, constructed, operated, and maintained so as to minimize adverse effects on such estuaries or their resources.

(3) Any unavoidable adverse effects on estuaries or their resources from construction, operation, or maintenance of a land or water use or development project are compensated insofar as reasonably justifiable.

(b) The heads of agencies, in consultation with the Secretary, may from time to time identify works of improvement and facilities, or uses, operations and maintenance thereof which are to be exempted, including temporary relief, from provisions of this order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the Secretary and the heads of the agencies concerned. A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically.

SEC. 5. *Procedures.* (a) Heads of agencies shall ensure that the requirements of Section 4 of this order are considered at the earliest possible stage of planning for new works of improvement and facilities of the covered activities.

(b) A request for funds to defray the cost of planning, designing, or constructing new works of improvement and facilities of the covered activities in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the related costs of such measures as may be necessary to assure that the new works of improvement and facilities will meet the requirements of Section 4 of this order.

(c) All Federal and federally assisted water and related land resource projects under the administration of the Departments of Agriculture, Interior, and the Army, and the United States Section of the International Boundary and Water Commission; all federally licensed water and related land resource projects under the purview of the Federal Power Commission, the Atomic Energy Commission, and the Departments of Agriculture, the Interior, and the Army; all water and related land resource planning under the aegis of the Water Resource Council; and all urban, highway, and airport projects assisted by the Departments of Housing and Urban Development, Transportation, and Commerce shall be consistent with the requirements of Section 4 of this order. In addition, all such projects involving the covered activities affecting estuaries and their resources in the Coastal States shall be presented for the consideration of the Secretary at the earliest feasible stage if they involve proposals or recommendations with respect to the authorization or construction of any Federal, federally assisted, or federally licensed project in the United States.

(d) The Secretary shall review all project plans, supporting data and reports on covered activities affecting estuaries and their resources in the Coastal States which are to be submitted to Congress or otherwise involve proposals or recommendations with respect to authorization or construction, including licensing, of a project in the United States. The Secretary shall discuss such estuaries and resources, assess the effects of the project on them, and make his recommendations within ninety days of receipt of such plans, data, and reports, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary in connection with the design, construction and operation of the project.

(e) The report of the Secretary shall accompany at the earliest practicable stage any report proposing authorization or construction, or a request for funding of any project described in subsection (c) of this section. In any case in which the Secretary fails to submit a report within 90 days after receipt of project plans, the head of the agency concerned may propose authorization, construction, or funding of the project, or may authorize construction through issuance of a license or permit or granting of assistance, without such an accompanying report. In such a case, the head of the agency concerned shall explicitly state in his request or report concerning the project that the Secretary has not reported on the potential impact of the project on the estuary and estuary resources involved.

[CEQ draft of December 22, 1970]

Memorandum for James F. C. Hyde, Jr.
Subject: Federal agency actions affecting wetlands.

At your request we have reviewed the draft Executive Order proposed by the Department of the Interior to implement the National Estuary Protection Act. As recognized in that Act, the estuarine areas of the nation have important ecological values that should be protected against unnecessary impairment. One obvious and necessary means of such protection is to ensure that estuarine values are considered in the decision of any Federal agency to assist or authorize development project in an estuarine area. The Council believes that an Executive Order would provide a proper means to ensure such consideration.

However, we recommend an approach different from the Interior proposal in several important respects. First, the nation's inland wetlands deserve protection equal to that given the coastal and Great Lakes estuaries. The Interior proposal, like the National Estuary Protection Act, is limited to estuaries, but we believe

the National Environmental Policy Act provides sufficient statutory authority for an Executive Order protecting the environmental values of all wetlands.

Second, we believe that an Executive Order for protection of wetlands should contain strong introductory language declaring the critical ecological importance of the wetlands and recognizing the threat posed by piecemeal alteration of these areas. The Order should stress the role that many Federal programs have in encouraging such alteration and establish a high national priority to avoid such encouragement in the future.

Third, we believe that the mechanism created by section (5c), (d), and (e) of the Interior proposal is unnecessarily cumbersome. The National Estuary Protection Act (16 U.S.C. § 1224) requires that the written views of the Secretary of the Interior be obtained before the submission to Congress of any project plans or reports affecting estuaries, and Executive Order 11507 and the Fish and Wildlife Coordination Act impose comparable requirements. The Executive Order proposed by Interior would extend this consultation requirement to a variety of Federal activities, including licensing activities, on which plans are not submitted to Congress. While we agree that wetlands values should be considered in all of these activities, we believe that extension of this special consultation mechanism is undesirable. The necessary consideration of wetlands values can be assured through Section 102 of NEPA and through periodic joint review by CEQ and Interior of the implementation of the Executive Order.

There is attached an alternative draft Executive Order embodying these suggestion.

EXECUTIVE ORDER NO. ——

PROTECTION OF WETLANDS IN THE ADMINISTRATION OF FEDERAL PROGRAMS

Whereas the Nation's wetlands, both coastal and inland, are of critical nationa importance as areas of great ecological diversity and productivity, providing food-sources and habitat for aquatic life, wildlife, and migratory waterfowl, natural flood control, recharge of underground aquifers, recharge and hydrologic balance of streams and rivers, and recreation and aesthetic resources of national interest; and

Whereas the piecemeal alteration and destruction of these wetlands through draining, dredging, filling, and other means is causing an irremediable loss of these critical ecological values; and

Whereas the Federal Government has extensive and continuing programs for the development of land and water resources, for the promotion of agriculture, for the construction of buildings, roads, and other facilities, and for the assistance and authorization of such activities, all of which programs often directly including wetlands that are the objects of Federal, State, or local conservation and protection programs:

Now, therefore, by virtue of the authority vested in me as President of the United States and in furtherance of the policy of the National Environmental Policy Act of 1969, it is ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government that the conservation and protection of the Nation's coastal and inland wetlands from development or alteration which endangers their resources is a matter of high national priority and that only extraordinary instances of overriding national interest justify assistance or authorization by the Federal Government of any project or activity that involves such development or alteration.

SEC. 2. *Responsibilities of Agencies.* The heads of agencies shall provide leadership in ensuring that the activities of their agencies are conducted in accordance with the policy of this Order.

(a) All agencies directly responsible for the construction of Federal buildings, roads, or other facilities not required to be located in or on wetlands shall, to the extent authorized by law, ensure that the facilities are located on upland sites where, insofar as possible, they will have no significant adverse impact on wetlands or their resources. Where buildings, roads, or other facilities are required to be located in or on wetlands, the agencies shall ensure that the facilities are designed, constructed, operated, and maintained so as to minimize adverse effects on such wetlands or their resources.

(b) All agencies responsible for the administration of Federal assistance or authorization programs involving the construction of buildings, roads, or other facilities shall, to the extent authorized by law, deny assistance or authorization for the construction of facilities not required to be located in or on wetlands unless

such facilities are to be located on upland sites where, insofar as possible, they will have no significant adverse impact on wetlands or their resources. Where buildings, roads, or other facilities are required to be located in or on wetlands, the agencies shall, to the extent authorized by law, deny assistance or authorization for their construction unless satisfied that the facilities will be designed, constructed, operated, and maintained so as to minimize adverse effects on such wetlands or their resources.

(c) All agencies responsible for the administration of Federal programs that assist or authorize, directly or indirectly, the alteration of wetlands by draining, dredging, filling, or other means for agricultural, water-resource, or flood-control purposes shall ensure that such programs are carried out in such a way as to minimize adverse effects on wetlands or their resources.

SEC. 3. *Requests for Appropriations.* A request for funds to defray the cost of designing and constructing new facilities on or in wetlands in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facilities will meet the requirements of section 2 of this Order.

SEC. 4. *Exemptions.* The heads of agencies, in consultation with the Secretary of the Interior, may from time to time identify facilities or uses thereof which are to be exempted, including temporary relief, from provisions of this Order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the Secretary of the Interior and the heads of the agencies concerned. A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically and shall be made available to the public in accordance with Section 552 of Title 5 of the United States Code.

SEC. 5. *Implementation.*

(a) As may be permitted by law, the head of each agency shall issue appropriate rules and regulations to govern the implementation of this Order by his agency.

(b) The Secretary of the Interior shall provide leadership in implementing this Order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this Order.

(c) The Council on Environmental Quality, in consultation with the Secretary of the Interior, shall maintain continuing review of the implementation of this Order and shall, from time to time, report to the President thereon.

SEC. 6. *Definitions.* As used in this Order the term:

(a) "agencies" means the departments, agencies, and establishments of the executive branch;

(b) "wetlands" means estuaries and coastal and inland beaches, tidal flats, bays, marshlands, lagoons, sounds and all other wetlands within the United States of the types defined in Department of the Interior Circular No. 39 (1956);

(c) "their resources", in the phrase "wetlands or their resources", means all manner of renewable and nonrenewable resources involved in the public interest, including, but not limited to, natural, living, esthetic, scenic, recreational, natural area, open space, historic, archeological, mineral, land, and water resources;

(d) "assistance or authorization" means assistance or authorization by any means, including, but not limited to, grants, loans, leases, insurance, guarantees, permits, and licenses;

(e) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Informal BSFW comments on CEQ
12/22/70 draft, handed Jan. 1971

COMMENTS ON DRAFT (CEQ) EXECUTIVE ORDER: "PROTECTION OF WETLANDS IN THE ADMINSITRATION OF FEDERAL PROGRAMS."

We are pleased to note the extension of coverage from estuarine areas only to all wetlands—both coastal and inland—also the leadership role which would be assigned to the Secretary in implementing the order. However, we are concerned that the present consultation procedures developed under the Fish and Wildlife Coordination Act may be jeopardized and that the author of the covering memorandum to Mr. Hyde may be unaware of the nature and extent of the coordination procedures now in effect. Also, the statutory consulting requirements of Section 4 of P.L. 90–454 are not implemented.

DRAFT MEMORANDUM TO JAMES F. C. HYDE, JR.

The Interior draft of an Executive Order was designed to implement a specific piece of statutory law which directs all agencies to consider the effects of their land and water development planning on estuarine resources and to include a discussion of these matters by the Secretary of the Interior with all reports on such projects going to Congress. The draft memorandum to Mr Hyde, and the draft EO, place sole reliance on the National Environmental Policy Act as the source of authority, giving no recognition to the Estuary Protection Act or to other Acts which are more specific and which might strengthen the case. The NEPA is principally a coordinating, policy making, reporting law. It provides no new substantive authorization specific to any class of natural resource, as wetlands.

The transmittal notes that Section 4 of the Estuary Protection Act requires the written views of reports going to Congress if the project affects estuaries, objects to the extension of the consultation requirements to reports not going to Congress (presumably reports on FPC, AEC, HUD, DOT, and other land as well as water resource projects which are covered in the Interior draft), and then omits any requirement that the Secretary be asked for his views on all projects going to Congress—the primary purpose of Section 4 and the Interior draft. Much of the consultation indicated in the Interior draft is already taking place. The so-called "cumbersome mechanism" referred to in the transmittal has long been functioning and can be applied to Section 4 situations with little adjustment.

DRAFT EXECUTIVE ORDER

We suggest that the prefatory sentence preceding Section 1 be amended to include not only the reference to policy set out in the National Environmental Policy Act but also to the consultation and other requirements of Section 4 of P.L. 90–454 (the Estuary Protection Act), the Fish and Wildlife Coordination Act, the water pollution control statutes, the flood insurance laws, and other applicable laws.

SEC. 1. We recommend that the word "restoration" (italic) be placed in the phrase" . . . that the conservation, *restoration*, and protection of . . . "

We also recommend that the following additional sentence be added to Section 1. "Existing consultation procedures on individual water development projects and comprehensive studies established pursuant to the Fish and Wildlife Coordination Act, the Water Project Recreation Act, the Federal Power Act, and other statutes and regulatory arrangements shall be continued," or language similar in intent. This will eliminate any suggestion that such coordination and consultation on individual water development and water use projects is not to be continued.

SEC. 2(a). Add "channels" following" . . . construction of Federal buildings, roads, . . . ", and change "upland sites" to "alternative sites." This latter would then not preclude the placement of channels, nuclear power plants, and the like seaward if that were locationally less damaging to a given wetland environment. Where it is inevitable that some works be placed in wetlands, it is important not only to "minimize" the adverse effects, but to provide for some form of compensatory or mitigatory measures where appropriate.

We suggest the addition of the underscored in the following phrase: ". . . where, insofar as possible, they will have no significant adverse impact—*directly or indirectly*—on wetlands or their resources."

SEC. 2(b). Should be conformed with the suggestions for Section 2(a).

SEC. 2(c). This section is so general as to be virtually ineffective. It suggests that the drainage of a wetland should be done in such a way as to minimize adverse effects. Drainage is, almost by definition, equated with the destruction of the wetland. The result of the proposed order would be that each agency chief would make a decision as to whether he should go ahead with a given drainage project, constrained only by a requirement in Section 5 that the Secretary of the Interior and CEQ be advisory bodies in a general program way.

One way to strengthen the subsection would be amend it to have it state that no further assistance or authorization to drain, dredge, or fill wetlands shall be extended unless these activities meet certain criteria (specified) related to the national interest. This should be coupled with the requirements of Section 4 of P.L. 90–454, probably as a new subsection.

SEC. 5(a). The agencies should be given a time limit to comply, as 6 months or a year.

SEC. 5(b). It should be made clear that the Secretary should be given some review authority over the development of the rules and regulations specified in (a) above.

At the end of this subsection, we urge the inclusion of language along the following lines: "The views and recommendations of the Secretary of the Interior required by Section 4 of the Estuary Protection Act shall be included in any report going to Congress on projects which directly or indirectly affect the estuaries of the United States."

SEC. 6(b): The defintion of wetlands should include the Great Lakes if that is not implicit in the Department of the Interior Circular No. 39. It should also encompass the definition of estuaries set out in P.L. 90–454, the Esturary Protection Act.

CONCLUSIONS

The draft EO suggests a broader approach than the Interior draft, and this desirable, broader approach should be retained. However, the former suffers from (1) being so general in some sections as to be ineffective, and (2) failing to address specifically the statutory requirement of Section 4 of P.L. 90–454 which was the basis for the Interior draft.

We recommend that the two versions be fused, extracting the best of both. That is, Subsections 2(a), (b), and (c) of the CEQ draft would be retained if amended as suggested above. To these amended subsections should be added the provisions of the Interior draft numbered Subsections 5(c), (d), and (e), abbreviated if possible. The latter are not covered in the CEQ draft. They are a requirement of law not yet implemented. The most certain way of having them implemented is to prepare and issue an executive order.

An alternative, which we prefer, is to issue both orders. They are compatible and cover different areas.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 29, 1971.

Attention Mr. Warren Dahlstrom.

Hon. ROGERS C. B. MORTON,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: In accordance with the provisions of Executive Order No. 11030, as amended, relating to proposed Executive orders and proclamations, this Office has received the following papers (copies enclosed): (1) Draft Executive order entitled "Protection of wetlands in the administration of Federal programs." (2) Transmittal letter of the Chairman of the Council on Environmental Quality, dated March 24, 1971.

The Secretary of the Interior, on November 3, last, presented a draft Executive order entitled "Protection, conservation, and restoration of estuaries in the use and development of water, land, and other resources." That draft was circulated to interested Federal agencies on November 17, 1970. The enclosed order draft represents an alternative to the original Interior Department proposal.

The Director of the Office of Management and Budget would appreciate receiving an expression of your views with respect to this matter as soon as possible.

Sincerely yours,

ARTHUR B. FOCKE,
General Counsel.

Enclosures.

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., March 24, 1971.

Hon. GEORGE P. SHULTZ,
Director, Office of Management and Budget,
Washington, D.C.

DEAR MR. SHULTZ: Thank you for your memorandum of February 6, responding to our comments on the draft Executive Order for the protection of estuaries that has been proposed by the Department of the Interior and circulated to appropriate agencies for comment. Our comments on that proposal, transmitted on January 14,

were accompanied by an alternative draft order which contained several modifications we thought desirable. Your response to our alternative draft has been very helpful in our further consideration of the problem.

Since transmitting our alternative draft order, we have had several fruitful discussions with the staff of your office and have concluded that certain changes should be made in our original draft. I enclose a revised draft incorporating these changes. We would appreciate its circulation to appropriate agencies for review and comment in conjunction with the review of the Interior Department proposal.

We shall be glad to provide all possible assistance to your office in reviewing this Executive Order.

Sincerely,

RUSSELL E. TRAIN, *Chairman.*

Enclosure.

EXECUTIVE ORDER NO. ——

PROTECTION OF WETLANDS IN THE ADMINISTRATION OF FEDERAL PROGRAMS

Whereas the Nation's wetlands, both coastal and inland, are of critical national importance as areas of great ecological diversity and productivity, providing food sources and habitat for aquatic life, wildlife, and migratory waterfowl, natural flood control, recharge of underground aquifers, recharge and hydrologic balance of streams and rivers, and recreation and aesthetic resources of national interest; and

Whereas the piecemeal alteration and destruction of these wetlands through draining, dredging, filling, and other means is causing an irremediable loss of these critical ecological values; and

Whereas the Federal Government has extensive and continuing programs for the development of land and water resources, for the promotion of agriculture, for the construction of buildings, roads, and other facilities, and for the assistance and authorization of such activities, all of which programs often directly or indirectly influence the alteration of wetlands, including wetlands that are the objects of Federal, State, or local conservation and protection programs:

Now, therefore, by virtue of the authority vested in me as President of the United States and in furtherance of the policy of the National Environmental Policy Act of 1969, it is ordered as follows:

SEC. 1. *Policy.* It is the policy of the Federal Government that the conservation and protection of the Nation's coastal and inland wetlands from development or alteration which affects their natural functioning is a matter of high national priority and that only extraordinary instances of overriding national interest justify assistance or authorization by the Federal Government of any project or activity that involves such development or alteration.

SEC. 2. *Responsibilities of Agencies.* The heads of agencies shall provide leadership in ensuring that the activities of their agencies are conducted in accordance with the policy of this Order.

(a) All agencies directly responsible for the construction of Federal buildings, roads, or other facilities not required to be located in or on wetlands shall, to the extent authorized by law, ensure that the facilities are located on nonwetland sites where, insofar as possible, they will have no significant adverse impact on the natural functioning of wetlands. Where buildings, roads, or other facilities are required to be located in or on wetlands, the agencies shall ensure that the facilities are designed, constructed, operated, and maintained so as to minimize adverse effects on the natural functioning of such wetlands.

(b) All agencies responsible for the administration of Federal assistance or authorization programs involving the construction of buildings, roads, or other facilities shall, to the extent authorized by law, deny assistance or authorization for the construction of facilities not required to be located in or on wetlands unless such facilities are to be located on nonwetland sites where, insofar as possible, they will have no significant adverse impact on the natural functioning of wetlands. Where buildings, roads, or other facilities are required to be located in or on wetlands, the agencies shall, to the extent authorized by law, deny assistance or authorization for their construction unless satisfied that the facilities will be designed, constructed, operated, and maintained so as to minimize adverse effects on the natural functioning of such wetlands.

(c) All agencies responsible for the administration of Federal programs that assist or authorize, directly or indirectly, the alteration of wetlands by draining,

dredging, filling, or other means for agricultural, water-resource, or flood-control purposes shall ensure that such programs are carried out in such a way as to minimize adverse effects on the natural functioning of wetlands.

SEC. 3. *Requests for Appropriations.* A request for funds to defray the cost of designing and constructing new facilities on or in wetlands in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facilities will meet the requirements of section 2 of this Order.

SEC. 4. *Exemptions.* The heads of agencies, in consultation with the Secretary of the Interior, may from time to time identify facilities or uses thereof which are to be exempted, including temporary relief, from provisions of this Order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the heads of agencies concerned. A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically and shall be made available to the public in accordance with Section 552 of Title 5 of the United States Code.

SEC. 5. *Implementation.*

(a) As may be permitted by law, the head of each agency shall issue appropriate rules and regulations to govern the implementation of this Order by his agency.

(b) The Secretary of the Interior shall provide leadership in implementing this Order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this Order.

(c) The Council on Environmental Quality, in consultation with the Secretary of the Interior, shall maintain continuing review of the implementation of this Order and shall, from time to time, report to the President thereon.

SEC. 6. *Definitions.* As used in this Order the term:

(a) "agencies" means the departments, agencies, and establishments of the executive branch;

(b) "wetlands" means estuaries and coastal and inland beaches, tidal flats, bays, marshlands, lagoons, sounds and all other coastal and inland wetlands within the United States of the types defined in Department of the Interior Circular No. 39 (1956);

(c) "assistance or authorization" means assistance or authorization by any means, including, but not limited to, grants, loans, leases, insurance, guarantees, permits, and licenses;

(d) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Memorandum To: Mr. John W. Neuberger, Staff Engineering Adviser, Office of the Assistant Secretary for Water and Power Resources.
From: Assistant director.
Subject: Meeting of Policy Development Committee, Water Resources Council, April 20, 1971.

As requested, I attended the above meeting. All of the agencies represented on the Council had people there.

The first item on the agenda was a discussion of the proposed Executive Order on the protection of wetlands in the administration of Federal programs. As you know, this was developed by the Council on Environmental Quality as an expansion of our proposed Executive Order to implement Sec. 4 of the Estuary Protection Act. I noted that the Interior Department had recently suggested extensive changes in this document in a letter to the Office of Management and Budget of April 12. I suggested that the Policy Development Committee might wish to defer its consideration of the matter until it received a subsequent draft for review.

However, Mr. John Roose, the Chairman of the Committee, thought that the Council might not see the revised Interior draft since it might well be considered by the Office of Management and Budget simply as comments on the earlier version. For this reason, he asked for a substantive discussion.

The representative from the Environmental Protection Agency mentioned two Executive Orders (11514 and 11507) and the Fish and Wildlife Coordination Act as adequate protection for wetlands and questioned the need for another Executive Order on the subject. Other members of the Committee questioned whether protection of wetlands, as proposed in the Executive Order might make it more difficult to develop water resources.

In defense of the proposed order, I noted that these other laws and orders had not been effective in protecting wetlands and stated that wetlands are splendid pieces of the environment which are steadily disappearing. I added that there had been no implementation of Sec. 4 of the Estuary Protection Act, which requires Interior review of any land or water project affecting estuaries.

These points were not persuasive to the members of the Committee. Mr. Roose stated that the Water Resources Council staff would advise the Office of Management and Budget of its view on the lack of need for the new Executive Order. I said that Interior would strongly dissent from this conclusion. Mr. Roose agreed to note that dissent.

Before I left the meeting, I drafted a proposed paragraph for incorporation in the Water Resources Council letter on the subject and gave it to Mr. Reese. A copy is attached.

The remaining subject on the agenda was the discussion of Flood Hazard Evaluation Guidelines for Federal Executive Agencies. Mr. A. N. Cameron of the Geological Survey was present and represented Interior in this discussion. I attach new revised paragraphs numbered 5 and 7 for the guidelines, which were passed out for consideration.

It was clear from the tone of the discussions that the Department of Housing and Urban Development will probably object to any issuance of flood hazard guidelines.

Mr. Roose announced that the Water Resources Council will move on May 1 from its present location to 2120 L Street, N.W., 8th Floor. He said that the telephone number will be 193 46442.

The next meeting of the Policy Development Committee will be at the new location on *May 4*. At that time, a number of advisory committees will be chosen. He outlined these committees as follows:

Advisory Committee Name	*Agency Membership*
Environmental	USDI, EPA, CEQ
Development	ARMY, AGR, USDI
Social Development	HUD, COMM., HEW
Community	HUD, DOT, FPC

A member of the Water Resources Council will also be a member of each of these committees. *In passing, I recommend to you that a member of our Bureau be designated to represent Interior on the Environmental Advisory Committee.*

Mr. Roose noted that the appropriation hearings for the Water Resources Council in both the House and Senate would be held on April 22. In addition, he said there would be hearings on April 23 of the Senate Interior Committee on raising the ceiling on appropriations to the Council, and similar hearings in the House Interior Committee on April 26.

Your material on the draft Executive Order on wetlands is returned herewith.

(Sgd.) JAMES T. MCBROOM.

Enclosures cc: RB, w/c New 5 and 7 and proposed paragraph Directorate Reading File AC:JTMcBROOM:ac 4-23-71

(5) . . . adopt a floodway as a standard area for flood hazard evaluation, regulation, or management in riverine, coastal, and debris cone areas, with the floodway defined as the area inundated by the 100-year flood except that in riverine areas the fringes (landward) of the inundated area may be excluded from the floodway to the extent that no more than one foot of rise in water level results in the remaining inundated area.

(7) . . . Decide on the conditions under which an evaluation must be made to determine the economic impact of including or excluding the use of a site in a flood-prone area. Such evaluation must demonstrate clearly that the use of the site is to the advantage of the community as well as to the advantage of the user of such site. This evaluation must also show why such proposed site use cannot be carried on outside the flood-prone area.

The evaluation mentioned in this guideline may be based on an economic analysis of the benefits, costs, and effects of proposed development in the flood-prone area as an alternative to the same development outside the flood-prone area. A favorable benefit-cost ratio is not, by itself, sufficient basis for development in the flood-prone area. It must also be demonstrated that the economic gain and other effects are of such advantage to the community as to offset the risks and hazards to which the proposed development will be subjected. The standards

used will be those promulgated by the Water Resources Council for planning for water and related land resources.

Where the proposed development in the flood-prone area is to be done by a private developer, the Federal agency responsible for the land or properties should require that the interested party bear the costs of the evaluation.

FOR INCORPORATION IN MAUGHN LETTER TO OMB ON WETLANDS EXECUTIVE ORDER DRAFT

Interior strongly dissents from this viewpoint on the grounds that all the other executive orders and laws cited by the member from EPA do not adequately focus on the problem of wetlands preservation. The fact that the destruction of esturial and inland wetlands has continued almost unabated under these other orders and laws demonstrates the need for this order. Finally, no regulations have yet been issued to implement Sec. 4 of the Estuary Protection Act of August 2, 1968 (62 Stat. 625). It is high time that this legislation, almost three years old, is implemented.

WATER RESOURCES COUNCIL, WASHINGTON, D.C.

Memorandum to: Policy Development Committee—April 9, 1971.
Subject: Agenda for Policy Development Committee Meeting 71-6, April 20, 1971, 10:00 a.m.

The meeting will be devoted to (1) a draft Executive Order on protection of wetlands, and (2) a draft of Flood Hazard Evaluation Guidelines.

(1) *Proposed Executive Order—"Protection of wetlands in the Administration of Federal Programs".*

This draft CEQ Executive Order is a proposed alternative to an order drafted by Interior on November 3, 1970. The Interior order was to implement Section 4 of the National Estuary Protection Act (P.L. 90-454). The Interior draft was more detailed and applied "To planning for, assisting, licensing, constructing, operating and maintaining works of improvement . . .". The term "estuary" was defined somewhat differently than "wetlands" in the CEQ proposed order. The Interior order was more specific in standards and criteria for administration and application.

The CEQ proposed order deals with construction programs directly or indirectly administered by Federal agencies. Further, the policy as now stated bars any construction which affects the development or alteration of the natural functioning of the wetlands. This is a stronger policy statement than that contained in the proposed Interior order. The transmittal letter from Chairman Train to the Office of Management and Budget explains how the CEQ draft came about.

Attached for Committee consideration is a draft response to OMB. Also attached is the draft Executive Order and related materials.

(2) *Flood Hazard Evaluation Guidelines for Federal Executive Agencies.*

The Office of Management and Budget in a letter of May 22, 1968, transmitted a copy of proposed government-wide guidelines relating to Executive Order 11296, which concerns "Evaluation of flood hazard in locating Federally owned or financed buildings, roads, and other facilities, and in disposing of Federal lands and properties." In its letter OMB said:

> "In order to provide equitable treatment of flood hazard problems among all Federal agencies, several Federal agencies joined together to establish uniform guidelines and criteria for implementation of the Executive Order . . .
>
> "The work group suggested that the Bureau of the Budget issue the guidelines to the affected Federal agencies. While strongly endorsing issuance of such criteria, we believe that a more detailed review and coordination of the technical aspects of the guidelines are needed. We further believe that this can be best accomplished by the Water Resources Council. We make special reference to WRC's effort in the development of uniform techniques for determining flood flow frequencies. We, therefore, request the Water Resources Council to review and issue the attached guidelines developed by the work group."

A task force composed of the following produced a draft, dated September 1969.

M. A. Benson, Interior—Geological Survey.
Bob Buehler, Tennessee Valley Authority.
A. N. Cameron, Interior—Geological Survey.
C. H. Gaum, Army—Corps of Engineers.
Truman Goins, HUD—Com. Res. Dev. Admin.
G. R. Phippen, Army—Corps of Engineers.
Victor Mockus, Water Resources Council (Chairman).

Following approval by COR, copies of the proposed guidelines were sent to 75 Federal executive agencies for review through experimental use and for a report to the Council on the results of the review. Copies were also sent to State agencies receiving WRC Title III grants and, through theAdvisory Commission on Intergovernmental Relations, to Governors of the States. Comments were received from 20 Federal and 15 State agencies.

The attached revised guidelines, for committee consideration, have been prepared by Council staff and reflect consideration of comments received and the Council document now being printed entitled, "Regulation of Flood Hazard Areas to Reduce Flood Losses". The main purpose of the revision was to produce not a technical handbook but rather a document useful to administrators as well as technical personnel of Federal exceutive agencies.

Notes on our meeting of March 16, 1971, and the Special Meeting of March 31, 1971, are enclosed.

JOHN B. ROOSE, *Assistant Director.*

Hon. GEORGE P. SHULTZ,
Director, Office of Management and Budget,
Washington, D.C.

DEAR MR. SHULTZ: This is in response to the Office of Management and Budget request of March 29, 1971, for comment on the proposed Executive Order, "Protection of wetlands in the administration of Federal programs".

The scope of the proposed order as wetlands are defined is far reaching and will have great effect on present Federal programs. This leads us to question if the definition of wetlands is too comprehensive. Our major comments on the proposed order are:

(1) The language of the order is vague. There are no standards by which consistent rules and regulations can be developed and applied.

(2) There needs to be set out more specifically in the order how the policy will be centrally administered by the Secretary of the Interior and the Council on Environmental Quality. For purposes of clarity, Section 4 should specifically note whether the heads of agencies determine which facilities are exempt or if such determination requires the concurrence of the Secretary. In Section 5, "Implementation", the role of the Secretary in providing leadership should be more specific. It is difficult to determine from reading this section whether the Secretary's role is consultative or directive. Consistent interpretations of these sections are necessary for the policy to be uniformly applied by the heads of agencies.

(3) Of considerable importance to the Council is that the order applies to construction activities, and the major impact relates to the planning for such construction. The Council's multiobjective planning program for water and related land resources now includes wetlands as defined in the order. As drafted, the proposed order is not sufficiently definitive to allow an assessment of the impact upon and relationship to the principles and standards for water and related land resources.

It is difficult to comment in any detail on the proposed order for reasons stated above except to reiterate that it will have far reaching effect on Federal, State and local water and related land programs. As a consequence, I would like to request that prior to the adoption of the order an opportunity be provided to clarify its coverage and administration.

Sincerely yours,

W. DON MAUGHAN, *Director.*

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 29, 1971.

Mr. W. DON MAUGHAN,
Director, Water Resources Council,
Washington, D.C.
(Attention Mr. John B. Roose).

DEAR MR. MAUGHAN: In accordance with the provisions of Executive Order No. 11030, as amended, relating to proposed Executive orders and proclamations, this Office has received the following papers (copies enclosed): (1) Draft Executive

order entitled "Protection of wetlands in the administration of Federal programs." (2) Transmittal letter of the Chairman of the Council on Environmental Quality, dated March 24, 1971.

The Secretary of the Interior, on November 3, last, presented a draft Executive order entitled "Protection, conservation, and restoration of estuaries in the use and development of water, land, and other resources." That draft was circulated to interested Federal agencies on November 17, 1970. The enclosed order draft represents an alternative to the original Interior Department proposal.

The Director of the Office of Management and Budget would appreciate receiving an expression of your views with respect to this matter as soon as possible.

Sincerely yours,

ARTHUR B. FOCKE, *General Counsel.*

Enclosures

PART F.—CORRESPONDENCE WITH THE CORPS OF ENGINEERS AND THE GENERAL ACCOUNTING OFFICE RE "GRANDFATHER CLAUSE" IN CORPS' HARBOR LINE REGULATIONS OF MAY 1970.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., May 9, 1973.

Lt. Gen. F. J. CLARKE,
Chief of Engineers, Department of the Army,
Washington, D.C.

DEAR GENERAL CLARKE: I understand that earlier this week a Corps official kindly informed the staff of the Subcommittee on Conservation and Natural Resources, on which I serve, that the Corps has determined, and is about to inform the owners of Robinson Terminal Warehouse in the Alexandria, Virginia, waterfront area, that a Corps permit will not be required in connection with Robinson's partially constructed covered pier for this area. I understand that the Corps reached this determination after reviewing the work already performed by these owners and concluded that a substantial portion of the work (which was halted by the Corps in 1971) was "commenced" prior to May 27, 1970. This determination, the Corps believes, is consistent with the "grandfather" clause in the Corps' harbor line regulations (33 CFR 209.150(b)(2)) which provides:

"For work already completed or commenced in conformance with existing harbor line authority before that date [May 27, 1970], no permit is required."

Because I have not had an opportunity to review the factual basis for this determination, I am not prepared to express my view as to the correctness of that determination. However, I believe that no legal basis for the determination exists, because the "grandfather" clause upon which it rests is unlawful.

The Corps revised its harbor line regulations in 1970 pursuant to the recommendation of the House Committee on Government Operations after a study by our Subcommittee (see H. Rept. 91–917, March 18, 1970, entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution"). The Committee recommended that the Corps halt the "practice of allowing all fills and construction shoreward of the harbor lines without a permit from the Corps" (pp. 9, 10). In revising the regulation, the Corps devised the above "grandfather" clause.

Our Committee reviewed the matter again last year, and, in a report which was also prepared by our Subcommittee (H. Rept. 92–1323; Aug. 10, 1972, entitled "Increasing Protection for Our Waters, Wetlands and Shorelines: The Corps of Engineers"), the Committee commented on this "grandfather" clause extensively, and recommended a further revision of the regulations. The report states (pp. 34, 35):

"The committee believes that allowing actual filling, dredging or other work in such cases without a permit would be clearly unjustified.

* * * * * * *

"On January 5, 1972, Subcommittee Chairman Reuss wrote to the Chief of Engineers, General Clarke, calling attention to this defect, and stated:

"'* * * the very purpose of both the committee's recommendation, and the corps' revision of its harbor line regulations, was to enable the corps to review the scope and effect of the proposed work and to determine whether such work would be compatible with the public interest in protecting the remaining waters and wetlands of our country. The words 'or commenced' in the corps' regulations constitute a 'grandfather clause' which disregards this purpose in favor of protecting the private interest of a person who had started any plan or work on the fill or construction before May 27, 1970. We think that such priority for the private interest is neither lawful nor compatible with the public interest. On the contrary, the corps ought to review the scope and effect of every such project. In such review, if the corps finds that it would be in the public interest to permit the private person to continue the fill or work in the waterway, the corps could, of course, grant him a permit. But if it finds that the public interest would be harmed by the fill or work, the corps should deny the application for permit and prevent its consummation.

"'We request that you eliminate this defect in the regulation.'

"On January 18, 1972, the corps replied that it was giving 'active consideration' to a revision * * * to clarify the regulation.'

"The committee recommends as follows:

"*The Corps of Engineers should promptly revise its harbor line regulation of May 27, 1970, to require a permit for every ongoing fill, construction or other work being done in navigable waters, whether or not 'commenced' before that date, in order to protect our Nation's rivers and estuaries from irretrievable losses.*

"If the corps finds that it would be in the public interest to continue the fill or work in the waterway, the corps could, of course, grant the permit. But if it finds that the public interest would be harmed by the fill or work, the corps should deny the permit and prevent consummation of the fill or work. Indeed, the public interest may in some instances require the corps to insist that the fill or structure already commenced must be removed." (Emphasis in original.)

In a letter dated September 18, 1972, to Subcommittee Chairman Henry S. Reuss, concerning the Committee's report, you stated "that most of the specific points and recommendations contained" in the report "are met by two revised regulations recently drafted by our office." (I understand that work on the second of these "revised regulations", which would cover this matter, has not yet been completed.) You also said (Hearings, "Mercury Pollution and Enforcement of the Refuse Act of 1899 (Part 3)", p. 1414):

"The regulation on harbor lines, ER 1145–2–304, as amended on 27 May 1970, contained a clause which allowed work 'commenced' before that date to be continued as originally planned. That clause was thought necessary to allow persons to complete those projects which they had begun in reliance on earlier regulations. We

intend to narrowly define the term 'commence,' and also to establish a date by which those projects, although already commenced, must be completed or be subjected to the permit procedures set out in the new permit program regulation."

Your proposed determination regarding Robinson's pier runs completely counter to the Committee's recommendation. I urge that you reconsider this matter in light of that recommendation.

We know of no legal basis for the "grandafther" clause. It is merely an administrative accommodation "to allow persons to complete those projects which they had begun in reliance on earlier regulations." But I understand that the Corps is unable to point to any project in the United States for which such a clause would be necessary, expect the Robinson project. If this is true, then the clause is even more objectionable, because it gives the appearance, at least, of a special interest provision. I urge that you promptly abandon this clause.

As you know, our Subcommittee, Congressmen Dingell and Saylor, and other Members of Congress, recently met with Interior Department officials, Alexandria officials and concerned citizens concerning the Federal interest in this area. Interior officials assured us that the Department would take new steps to ascertain and to preserve that interest. I think that your proposed determination regarding the Robinson site would be antithetical to that interest.

Sincerely,

JOHN E. MOSS,
Member, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., May 23, 1973.

Hon. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

DEAR MR. MOSS. On behalf of the Chief of Engineers, I am responding to your recent letter concerning regulations promulgated by the Corps of Engineers for establishment of harbor lines in navigable waters of the United States pursuant to Section 11 of the River and Harbor Act of 3 March 1899, 33 U.S.C. 404. In particular, you question the legality of the "grandfather" clause contained in the 27 May 1970 change to the harbor line regulations which provides "For work already completed or commenced in conformance with existing harbor line authority," no permit is required.

This question was recently resolved by 14 May 1973 decision of the Supreme Court of the United States in the case of United States v. Pennsylvania Industrial Chemical Corporation. Interpreting regulations promulgated under another section of the 1899 Act, the Court stated,

"Moreover, although the regulations did not themselves purport to create or define the statutory offense in question, it is certainly true that their designed purpose was to guide persons as to the meaning and requirements of the statute. Thus, *to the extent that the regulations deprived PICCO of fair warning as to what conduct the Government intended to make criminal,* we think there can be no doubt that *traditional notions of fairness inherent in our system of criminal justice prevent the Government from proceeding with the prosecution.*" (Emphasis supplied.)

This same concept underlies the adoption of a "grandfather" clause pertaining to earlier harbor line regulations; namely, one who commences construction in reliance on the purported authority of an official regulation, should not in fairness be penalized by having his investment subsequently declared to be without authorization.

When the change to the harbor line regulations was published on 27 May 1970, equitable considerations required the adoption of a "grandfather" clause. Discussion as to its validity at this time is largely moot because as a practical matter, construction underway in May 1970 would have been completed within the three years since that time. The Robinson project is not one of special interest, but of unusual circumstances, in that its construction would have been completed by now if the District Engineer had not interrupted construction progress by issuance of a cease and desist order, an order which after thorough review is being withdrawn as invalid. Likewise, the withdrawal of the cease and desist order is an action that relates solely to the exercise of the navigation servitude to which submerged land is subject, and not to the ownership of that submerged land.

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Enclosed per telephonic request on your behalf by Mr. David Finnegan of the Subcommittee staff, are copies of correspondence obtained from the U.S. Army Engineer District, Baltimore, Maryland, and which relate to the construction involved.

Sincerely yours,

FREDERICK F. IRVING,
Colonel, Corps of Engineers,
Assistant Director of Civil Works for Atlantic Division.

1 Incl
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[Requested Supportive Correspondence Between Corps of Engineers, Baltimore District and Robisonn Terminal Warehouse Corporation]

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BALTIMORE, MD., *September 5, 1969.*

Mr. C. W. DRUMHELLER,
Site Plan Coordinator,
City of Alexandria,
Alexandria, Va.

DEAR MR. DRUMHELLER: This refers to your letter of 27 August 1969 concerning a proposal by the Robinson Terminal Company to construct a covered pier in the Potomac River at Alexandria, Virginia.

Inasmuch as the proposed pier will be an open-pile structure and will be placed landward of the Department of the Army established pierhead line in the vicinity, this office will interpose no objection thereto.

A Department of the Army permit will not be required for the proposed covered pier.

Sincerely yours,

JOHN L. REYNOLDS,
Chief, Operations Division.

DEPARTMENT OF THE ARMY,
Baltimore, Md., August 27, 1971.

Mr. LLOYD M. GERBER,
Office Manager,
Robinson Terminal Warehouse Corp.,
Alexandria, Va.

DEAR MR. GERBER: A report to this office indicated, and a field investigation confirmed that Robinson Terminal Warehouse Corporation is driving steel pilings in the Potomac River at Alexandria, Virginia, between the company's main shipping pier and present warehouse.

Under revised Department of the Army regulations, effective 27 May 1970, pierhead and bulkhead lines established by the Department of the Army no longer automatically authorize construction and/or filling of any kind shoreward of those lines. Harbor lines are to be used only as guidelines, and Department of the Army permits must be obtained prior to commencement of any construction shoreward of those lines. For work already completed or commenced in conformance with harbor line authority before 27 May 1970, no permit is required.

You are requested to furnish to this office before 15 September 1971 a tracing or drawing of your proposed construction in this area, data to indicate the date when this work was started, indications as to how much work has been performed to date, and your contemplated schedule of completion. Upon receipt of this information, a decision will be made as to whether the proposed work is such as to be in compliance with existing regulations or whether Robinson Terminal Warehouse Corporation should apply for a Department of the Army permit under the provisions of Section 10 of the River and Harbor Act of 3 March 1899.

Sincerely yours,

JOHN P. O'HAGAN,
Chief, Operations Division.

ROBINSON TERMINAL WAREHOUSE CORP.,
Alexandria, Va., September 7, 1971.

DEPARTMENT OF THE ARMY,
Baltimore District Corps of Engineers, Baltimore, Md.
(Attention Mr. John P. O'Hagan, Chief, Operations Division.)

GENTLEMEN: In response to your request in your letter of August 27, 1971 we submit the following: 1. Schedule showing dates and work performed on the construction in question thru 14 August 1970. 2. Tracing of our proposed construction.

We have to date put in 72 pilings. We have on order with Shockey Bros. Inc. the precast prestressed concrete slabs and the structural steel is on order with Southern Iron Works.

At the present time we are not working on the project and have not established a date to continue the work. We intend to complete the first phase by midsummer of 1972. The first phase will include laying of one-half of the structural steel, one-half of the prestressed concrete floor and one-third of the building plus at least one-half of the piling. The rest of the construction will be completed in midsummer of 1973.

Should you want more detail on this matter please give us a call.

Very truly yours,

Robinson Terminal Warehouse Corp.,
LLOYD M. GERBER.

DEPARTMENT OF THE ARMY,
Baltimore, Md., September 16, 1971.

Mr. LLOYD M. GERBER,
Office Manager,
Robinson Terminal Warehouse Corp.,
Alexandria, Va.

DEAR MR. GERBER: Reference is made to our letter of 27 August 1971 regarding the steel piling being driven by your company in the Potomac River at Alexandria, Virginia between your main shipping pier and present warehouse.

After reviewing the data you submitted with your letter of 7 September 1971, it is the opinion of this office that construction was started after 27 May 1970 and is in violation of existing regulations pertaining to construction shoreward of established harbor, pierhead, and bulkhead lines. For your information, effective 27 May 1970, established harbor, pierhead, and bulkhead lines are to be used only as guidelines and Department of the Army permits must be obtained prior to commencement of any construction shoreward of those lines. You are therefore directed to cease work and to perform no more such work at this location without compliance with the law.

You are requested to furnish this office with plans of the work you have performed since 27 May 1970 in order that we can give proper consideration to this matter. Sample drawings indicating the information that should be shown on your plans may be found in the back of the inclosed information circular.

Sincerely yours,

JOHN P. O'HAGAN,
Chief, Operations Division.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 1, 1973.

Lt. Gen. F. J. CLARKE,
Chief of Engineers,
Department of the Army,
Washington, D.C.

DEAR GENERAL CLARKE: I have received the letter dated May 23, 1973, signed by Colonel Irving on your behalf, replying to my letter of May 9. These letters concern the "grandfather" clause in the Corps' harbor line regulations and the Corps' apparent intention to reverse its 1971 determination that the "construction" initiated by the owners of Robinson Terminal Warehouse at the Alexandria, Virginia, waterfront "started after May 27, 1970" and that therefore further construction without a permit was not allowable under that grandfather clause.

Colonel Irving's letter notes that I "question the legality" of the grandfather clause, but his letter refrains from discussing the question. Instead, Colonel Irving's letter merely states that, "Discussion as to its validity at this time is largely moot," and he asserts that "equitable considerations required" that the Corps adopt the grandfather clause. His letter further states that the Robinson Terminal project is one "of unusual circumstances, in that its construction would have been completed by now if the District Engineer had not interrupted construction progress by issuance of a cease and desist order" which the Corps now proposes to withdraw.

However, discussion as to the "validity" of the "grandfather" clause is not moot. If it is unlawful, as our Subcommittee and Committee have repeatedly pointed out, the only basis or the Corps to allow Robinson to proceed without a permit has been dissipated.

Colonel Irving's letter errs in at least the following respects:

1. Our Committee's report of March 18, 1970 (H. Rept. 91-917), cited in my letter of May 9, demonstrated that the Corps' prior practice of allowing fills and construction shoreward of harbor lines without a permit was contrary to the River and Harbor Act of 1899 and therefore urged that the Corps abandon that practice. The Corps recognized this, and, quite properly, revised its harbor line regulations on May 27, 1970, to require that everyone wishing to do work shoreward of such lines must apply for and obtain a Corps permit. But, at the same time, the Corps adopted the "grandfather" clause which, as to some persons, perpetuated this unlawful practice. Since the practice itself was unlawful, the "grandfather" clause is also unlawful. The Corps has no authority to abrogate, either by administrative practice or by regulation, the requirements of the law. Innumerable court decisions confirm this fundamental rule.

2. Colonel Irving does not state what are the "equitable considerations" which "required the adoption of" the grandfather clause. Nor is there any which "required" it.

The Corps' regulations of May 27, 1970, do not preclude a person from constructing or filling in navigable waters, but merely require that he apply for and obtain a Corps permit under Section 10 of the River and Harbor Act to do so. This is not an onerous burden. Thus, Robinson Terminal is in no different position, in this respect, than a person who illegally conducts work in a navigable waterway and is given the opportunity by the Corps to apply for an after-the-fact permit. In both cases the Corps must determine whether or not the work is in the public interest. If it is, the permit should be issued. If it is not, then the permit should be denied. There is no legal justification for the Corps to short-circuit this regular procedure.

3. In asserting that the "grandfather" clause, which would, if applied, short-circuit this procedure, is based on "equitable considerations", Colonel Irving simply ignores the necessity of the Corps' determining what are all the facts, as it does when it determines whether or not the work is in the public interest. Even if the concept of "equitable considerations" used by Colonel Irving were legally appropriate, the burden of establishing precisely what are the "equitable considerations" that exist to estop the Government from enforcing the law falls upon the one seeking such estoppel. But in the base of the "grandfather" clause of May 27, 1970, the corps has pre-determined that such "equitable considerations" not only exist, but also that they outweigh the Corps' duty to protect the public interest.

Colonel Irving's letter too narrowly construes the concept of "equitable considerations". The "grandfather" clause forces the Corps to acquiesce in any construction or fill in navigable waters shoreward of harbor lines without regard to all the "equities", public as well as private. Thus, even if the work "commenced" before May 27, 1970, involved expenditure of *only one dollar*, the grandfather clause would permit any filling or construction even though such work affected *very large* monetary and non-monetary values rightfully belonging to all the people. It is precisely this blunt-ax treatment, without adequate weighing of the public interest factors, which prompted our Subcommittee's letter of January 5, 1972, to the Corps. In that letter, we urged that the Corps "review the scope and effect of the proposed work and to determine whether such work would be compatible with the public interest in protecting the remaining waters and wetlands of our country", rather than blindly bow to a grandfather clause "which disregards this purpose in favor of protecting the private interest of a person who had *started any plan or work* on the fill or construction before May 27, 1970".

Our Committee's report of August 10, 1972 (H. Rept. 92–1323), which is cited in my letter of May 9, re-affirmed the Subcommittee's view and emphasized further that the Corps should ascertain what is the public interest rather than simply whether unauthorized work was "commenced" before May 27, 1970, as the touchstone to determine whether to allow construction or filling of navigable waters. Thus, both our Subcommittee and Committee called for "equitable consideration" of all factors *including the interest of the public*, whereas Colonel Irving's reference to "equitable considerations" apparently means only the automatic elevation of the private interest over the public interest regardless of, and without weighing, the circumstances, values and interests involved.

4. Colonel Irving's "equitable consideration" argument is defective as a matter of law. His assertion that "one who commences construction in reliance on the purported authority of an official regulation" should be allowed to complete it wholly disregards the long-established and fundamental rule that a regulation issued, or advice given, by a Government agency which is contrary to law cannot estop the Government from applying the law. *E.g., Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380 (1947).

Colonel Irving's letter, however, contends that the estoppel inherent in the "grandfather" clause is justified, and that the legality of the clause was upheld, by the Supreme Court's recent decision of May 14, 1973, in *United States* v. *Pennsylvania Industrial Chemical Corp.* That contention is not sound.

The PICCO decision did not in any way involve the grandfather clause or any fills or construction that would violate Section 10 of the 1899 River and Harbor Act. Rather, that decision involved quite different matters and issues.

The PICCO Company was prosecuted criminally for depositing refuse (chemicals) in a navigable waterway in August 1970 without a permit and thereby violating Section 13 of the 1899 River and Harbor Act. The Supreme Court noted that the Government conceded that the refuse discharged by PICCO "was not of a nature that would impede or obstruct navigation" (Opinion, ftnt. 22), and that prior to December 1970 the Corps' regulations "consistently construed sec. 13 as limited to water deposits that affected navigation". (Opinion, slip copy, p. 17.) The Company therefore contended that its deposits in August 1970 "were made in good faith belief that they were permissible under law" and that it "was affirmatively misled by the responsible administrative agency into believing that the law did not apply in this situation." (Opinion, slip copy, p. 19.)

The Supreme Court ruled that "to the extent that the regulations deprived PICCO of fair warning as to what conduct the Government intended to make criminal, we think there can be no doubt that traditional notions of fairness in our system of criminal justice prevent the Government from proceeding with the prosecution." (Opinion, p. 19.) The Supreme Court therefore remanded the case to the District Court to ascertain whether PICCO had, in fact, relied on the Corps' earlier regulations and whether such reliance was reasonable. (Opinion, p. 20.)

The Court's opinion involved *only a criminal prosecution for past acts* which the defendant contended were done in reliance on the regulations or advice of the agency (the Corps) administering the law which the defendant was charged with violating. Thus, in describing the Company's defense, the Court's Opinion (p. 19) cited *Raley* v. *Ohio*, 360 U.S. 423 (1959) (which reversed a State conviction of a person who had relied on a State Commission's advice), and *Cox* v. *Louisiana*, 379 U.S. 559 (1965) (which reversed a conviction of a person for picketing at a place where the local Chief of Police gave him permission to do so). In ruling that

PICCO could raise the defense of reliance on the agency's prior regulation, the Supreme Court particularly directed attention to two law review articles discussing the doctrine of estoppel in criminal cases. One article dealt solely with "Applying Estoppel Principles in Criminal Cases" (78 Yale L.J. 1046 (1969)). The other article, by Frank C. Newman in 53 Colum. L. Rev. 374 (1953), stated at the outset:

"While good faith reliance on agency rulings will probably keep a man out of jail, there is considerable doubt whether he is similarly protected against fines, injunctions, liability for damages, forfeiture, license revocation and the like."

Newman therefore proposed that Congress adopt a general statute, to be entitled the "Good Faith Reliance Act", which would immunize a person from liability to the United States Government "for damages and penalties" because of conduct violating specified statutes if he acted in reliance on a rule or written statement of the agency administering the law.

Congress never enacted Newman's proposed general statute, although it did authorize such immunity under some specific statutes (*e.g.* Portal-to-Portal Act of 1947, 61 Stat. 89, 29 U.S.C. 259; Title VII of Civil Rights Act of 1964, Sec. 713(b), 42 U.S.C. 2000e-12(b)); but none is applicable here. However, it is significant that Newman's article, which the Supreme Court cited for its ruling in the PICCO case, proposed immunity in reliance cases *only with respect to criminal and punitive cases*, and not in cases where the person either received a benefit erroneously or wanted to take unlawful future action after the correct status of the law was made clear to him. Newman's article specifically pointed out (53 Colum. L. Rev. at p. 385):

"The proposed statute provides: 'No person shall be liable to the United States Government for damages or penalties . . .' These words are intended to protect people from imprisonment, fines, forfeitures, revocation of licenses and suits by the Government to recover damages under contracts or special statutes. A distinction must be drawn between action by the Government to punish a man and action to prevent his causing harm. Power to prevent harm must, of course, be preserved. Therefore, the statutory words preclude only those seizures, suspension of licenses and suits for an injunction that are punitive. But suits for restitution are not precluded, since the mere granting of benefits creates no equitable right to retain them when they were received only because of the Government's error." (Footnotes omitted.)

The PICCO decision would presumably support the Corps if it contended that a person, who had filled or constructed in navigable waters shoreward of harbor lines before May 27, 1970 in good faith reliance on the then Corps regulations and practices, should be immune from criminal prosecution for such work because such regulations and practices did not give "fair warning" that such work was "criminal". But that decision does not in any way authorize that same person to continue such work after May 27, 1970, when the Corps established and informed him that it was unlawful to do so, particularly since the new regulations do not preclude such continued work if a permit is obtained. Colonel Irving's reliance on this decision as support and justification for the grandfather clause is simply misplaced.

5. The fact that changes in the Corps' regulation or permit system may adversely affect some persons who have spent money in planning or performing certain work is not a sound public reason for exempting all such persons from the new regulation or system. To its credit, the Corps' Jacksonville District is following that policy in the case of ITT's Palm Coast development in Florida. That company, which rather routinely received permits for work in 1970, has now completed most of the work for a canal system in upland areas where the Corps believes no permit is necessary. However, the company needs a permit to connect the system to navigable waters. On March 9, 1973, the Jacksonville District Engineer wrote to ITT as follows:

"Costly investments on upland construction will not prejudice our final decision on the pending application. All permit applications are now more closely scrutinized as to whether the proposed work is 'in the general public interest.' Therefore, we strongly recommend that your upland excavation be stopped so that you will not end up with land-locked canals should proper authorization not be obtained."

As this statement suggests, the Corps, in 1973, is "more closely" scrutinizing the proposed work than it was in 1970 and may even deny the permit, despite heavy expenditures already made by ITT. This closer scrutiny results from new laws and Corps' changes in regulations. Yet the Corps, quite properly, did not adopt a "grandfather" clause to protect the investment of ITT and other developers, even though the "equitable considerations" may be very similar to, or even greater than, those involved in work affected by its harbor line regulations.

6. Even if we assume, *arguendo*, that the grandfather clause is valid, I think it is quite clear that Robinson Terminal did not comply with it. The "grandfather" clause says: "For work already completed or commenced in conformance with existing harbor line authority before that date [May 27, 1970], no permit is required." The building schedule which Robinson Terminal submitted to the Corps on September 7, 1971 (copy attached) shows that the work performed by the company prior to June 1, 1970, consisted solely of planning, surveying, test boring, obtaining non-Federal permits and quotations on materials, and correspondence. There was no construction work commenced or performed prior to May 27, 1970. The "grandfather" clause purports to relieve a person from the permit obligation only with respect to actual "work". Robinson Terminal's expenditures were simply for pre-construction planning and preparation, and therefore do not meet the requirements of the "grandfather" clause, unless, of course, the Corps has adopted a strange and unpublished interpretation of the term "work" to make it so simple for Robinson or anyone else to be covered by that term that it becomes essentially meaningless.

Your Baltimore District Engineer reached precisely the same conclusion on September 16, 1971, when he advised the company "that construction was started after May 27, 1970" and directed the company "to cease and perform no more such work at this location without compliance with the law". So far as we know, the Corps' proposal to reverse the Baltimore District Engineer's decision and to withdraw the cease-and-desist order is based on the same factual data relied on by the Baltimore District Engineer. If so, I think your proposed reversal is unjustified and arbitrary and should be abandoned.

I feel certain that many applicants for Corps permits perform much similar preconstruction work before the Corps acts on the permit application, taking the chance that the permit may never be issued. In short, I think there is nothing unusual here to warrant the reversal of the Baltimore District Engineer's decision which Colonel Irving proposes.

I want to emphasize that our Subcommittee has not considered whether or not a permit should be issued to Robinson Terminal. That is a matter for the Corps to consider under the regulations governing the issuance of permits. We are merely requesting that the Corps comply with the law by abandoning the unlawful "grandfather" clause and requiring that Robinson Terminal, and anyone else in the same posture, apply for and obtain a permit.

I point out, however, that in the Alexandria waterfront area, there is the added consideration that the United States is claiming ownership to various lands, including those submerged lands where Robinson proposes to build its new warehouse. The Corps, like any agency, has an obligation to protect the Federal interest in these lands. If it issues a permit or allows Robinson to build pursuant to the "grandfather" clause without the concurrence of the Interior Department, which is responsible for asserting that interest on behalf of the United States, then the Corps would fail to carry out that obligation and would be acting to the detriment of the United States.

On May 16, the Interior Department advised us that it is reviewing the title question concerning the Alexandria waterfront area with the view "of determining whether, and in what manner, the matter might be referred to the Department of Justice." Quite clearly, the Corps should consult with both these agencies *before* doing anything that might affect that title or make more difficult the Government's case in this regard. I am sure you will agree that Colonel Irving and the Corps are not the judge on whether or not the "withdrawal" of the cease-and-desist order will or will not affect "the ownership" of the submerged land.

Please advise us of the results of that consultation.

JOHN L. MOSS,
Member, Conservation and Natural Resources Subcommittee.

ROBINSON TERMINAL WAREHOUSE CORP.—BUILDING SCHEDULE

Date	Description of work	Other party
June 1969	Survey to locate pier and building for architect	Cross & Ghent.
Do	Test boring company engaged	Raymond International, Inc.
Do	Design and drafting began	Fortune, Downey & Elliot.
July 3, 1969	Test boring completed	Raymond International, Inc.
August 1969	Topo, site plan completed	Cross & Ghent.
Do	R.L.C. & L.M.G. visited Army Corps of Engineers to get approval.	Army Corps of Engineers.
Aug. 26, 1969	Rev. final site plan completed	Cross & Ghent.
Aug. 27, 1969	Letter from Alexandria City to Corps of Engineers	
Sept. 2, 1969	Public hearing	Planning Commission, Alexandria.
September 1969	Letter from Corps of Engineers to Alexandria City advising no permit required.	Corps of Engineers.
Mar. 12, 1970	Requests for quotes on piling	
Apr. 10, 1970	Application for building permit	City of Alexandria.
Apr. 23, 1970	Approval of plans	Department of Building and Mechanical Inspection.
Apr. 30, 1970	Release agreement entered into	City of Alexandria.
May 1, 1970	Site plan approved	Department of Public Works, City of Alexandria.
Do	Paid final filing fee	City of Alexandria.
May 4, 1970	Apr. 30 agreement recorded	Do.
Do	Sewer tap permit issued	Do.
May 14, 1970	Site preparation for survey	Robinson Terminal.
May 1970	Requests for structural steel quotes	
Do	Requests for quotes for Precast Prestressed Concrete Slabs	
May 27, 1970	Permit regulation revised	
June 1, 1970	Began survey to stakeout piling	Cross & Ghent.
June 5, 1970	Piling contracted	Union Metal.
June 30, 1970	Piling received	Do.
July 1970	Requests for quotes on automatic sprinkler system	
Aug. 14, 1970	Piling test began	Robinson Terminal.
Sept. 11, 1970	Purchase of diesel pile hammer with helmet	McIlhaney Equipment Co., Inc.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 31, 1973.

Lt. Gen. F. J. CLARKE,
Chief of Engineers, Department of the Army,
Washington, D.C.

DEAR GENERAL CLARKE: In my letter to you of June 1, I stated that the "grandfather" clause in the Corps' harbor regulations should not be applied to allow the Robinson Terminal Warehouse Corporation to extend its structure into submerged land on the Alexandria, Virginia, waterfront without a permit. I also suggested that the Corps consult with the Departments of the Interior and Justice concerning protection of the Government's interest in this matter.

I would appreciate receiving your views on my letter, and information as to the progress of your consultation efforts.

Sincerely,

JOHN E. MOSS,
Member, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., September 4, 1973.

Hon. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

DEAR MR. MOSS: The Chief of Engineers has asked that I reply to your most recent letter concerning application of regulations promulgated by the Corps of Engineers relative to harbor lines in navigable waters of the United States, pursuant to Section 11 of the River and Harbor Act of 3 March 1899, 33 U.S.C. 404. You question the legality of the section of the revised harbor line regulations, dated 27 May 1970, which provides, "for work already completed or commenced in conformance with existing harbor line authority" no permit is required. In particular, you question the application of this section, which is more commonly

referred to as the "grandfather" clause, to the Robinson Terminal Warehouse Corporation project on the Alexandria waterfront.

This office has given the comments and suggestions contained in the above reference letter careful consideration; however, the Corps opinion and position remain unchanged as to the legality of the "grandfather" clause and the fact that the Robinson Terminal Warehouse Corporation project comes within its purview and protection.

The insertion of "grandfather" clauses similar to the one in question is common in both statutes enacted by Congress and regulations promulgated by various Federal agencies. This office is of the opinion that by Congress inserting such a clause and by the Federal courts upholding the insertion of such a clause, both have found a "grandfather" clause both desirable and necessary to prevent injustice and potential damage to persons who have acted in good faith reliance on the laws and regulations previously in effect, and this position was administratively applied by the Corps in regard to the changed harbor line regulations. In the present Robinson case, that corporation acted in reliance on the Corps previous regulations and the actions of an authorized Corps inspector. When the Corps Baltimore District Chief of Operations issued the stop work order, the Robinson Terminal Warehouse Corporation appealed that order to the Office of the Chief of Engineers.

The Robinson Corporation applied for and obtained all the required approvals, including an assurance in writing in 1969 from the Corps Baltimore District Chief of Operations that there was no objection to the work, and that a Department of the Army permit was not required. Thereafter, Robinson surveyed the construction site, completed test borings, completed site plans, formulated design plans, requested quotes on necessary materials and approved an allocation of $50,000 to be expended on piling construction during the year 1970. A Corps of Engineers inspector sometime in August 1970 after the publication of the 27 May 1970 regulations inspected the Robinson construction site and had no objection to the construction work as coming under the protection of the "grandfather" clause of the said regulations. The Robinson Terminal Warehouse Corporation has shown that, in reliance on the Corps policies, regulations, and personnel, it expended over $5,000 for local permits and in excess of $89,000 during the initial construction phase of the project. Additional costs were also incurred for preliminary planning, design costs, and legal work incurred by Robinson in pursuing its administrative remedies.

Your suggestion that Robinson be required to apply for a permit is not feasible under the circumstances. This office has in the past, as it will in the future, cooperated with the Interior Department by refusing to accept application for new permits on the Alexandria Waterfront pending resolution of title claims in the area on behalf of the United States. A decision by this office that the Corps District issued the cease and desist order improperly would not contravene this inter-departmental understanding. Furthermore, this office does not question the ability of the courts to reach a fair and impartial decision on the ownership of land question without being prejudiced by the Corps actions in this matter.

I trust this information is of assistance to you in understanding the Corps of Engineers position in this matter.

Sincerely yours,

JOHN W. MORRIS,
Major General, USA,
Director of Civil Works.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
June 8, 1973.

Re Alexandria Waterfront.

Hon. NATHANIEL P. REED,
Assistant Secretary,
Department of the Interior.

(Attention Mr. George Gardner).

DEAR MR. REED: The Corps of Engineers has concurred in your past request for assistance by not issuing permits for work on the Alexandria waterfront until your Department has resolved the title claims on behalf of the United States to land below ordinary high water of the Potomac River as that line existed in 1791. The Corps will continue in this posture until the matter is resolved.

Representative John E. Moss, Member of the Conservation and Natural Resources Subcommittee, furnished you a copy of his letter dated 9 May 1973, in which he questioned application of the "grandfather" clause to work commenced prior to 27 May 1970, the date the Corps' revised regulations on harbor lines was published and which required permits for work performed behind harbor lines, but excepted work already completed or commenced before that date. This office had occasion to review work commenced by the owners of Robinson Terminal Warehouse on the Alexandria, Virginia waterfront, and determined that the "grandfather" clause was applicable. A copy of our response to Mr. Moss is enclosed to complete your records.

As stated in the enclosed letter, the Corps' determination is only a recognition of a legal right vested in the owners of Robinson Terminal Warehouse.

Sincerely yours,

FREDERICK F. IRVING,
Colonel, Corps of Engineers,
Assistant Director of Civil Works for Atlantic Divisions.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 17, 1973.

Mr. ELMER B. STAATS,
Comptroller General,
General Accounting Office,
Washington, D.C.

DEAR MR. STAATS: On March 18, 1970, the House Committee on Government Operations issued House Report 91-917, entitled "Our Waters and Wetlands: How The Corps of Engineers Can Help Prevent Their Destruction and Pollution" (copy enclosed). The report recommended that the Corps of Engineers require that a Corps permit be obtained by anyone seeking to dredge, fill, or construct in navigable waterways shoreward of harbor lines.

On May 27, 1970, the Corps adopted such regulations pursuant to section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). However, the new regulations contained a "grandfather" clause in section 209.150(b)(2) which substantially undercuts the objective of those regulations and, in our opinion, is not authorized by the 1899 Act. The grandfather clause states that no Corps permit "is required" for work already completed "or commenced in conformance with existing harbor line authority before" May 27, 1970.

Our Committee's report of August 10, 1972 (H. Rept. 92-1323) entitled "Increasing Protection For Our Waters, Wetlands, and Shorelines: The Corps of Engineers" (copy enclosed) criticized the grandfather clause and recommended (pp. 32-35):

"The Corps of Engineers should promptly revise its harbor line regulation of May 27, 1970, to require a permit for every ongoing fill, construction or other work being done in navigable waters, whether or not 'commenced' before that date, in order to protect our Nation's rivers and estuaries from irretrievable losses.

"If the Corps finds that it would be in the public interest to continue the fill or work in the waterway, the Corps could, of course, grant the permit. But if it finds that the public interest would be harmed by the fill or work, the Corps should deny the permit and prevent consummation of the fill or work. Indeed, the public interest may in some instances require the Corps to insist that the fill or structure already commenced must be removed."

Enclosed are copies of correspondence with the Corps concerning the validity of the "grandfather" clause and its application to the proposed addition to the Robinson Terminal Warehouse on the waterfront in Alexandria, Virginia. The Corps asserts that the proposed addition is covered by the grandfather clause and therefore the terminal owners can proceed to build the addition without first obtaining a Corps permit under the 1899 law.

The United States, through the National Park Service, claims title to certain submerged and fastlands in the Alexandria waterfront area, including the submerged lands where the Robinson Terminal addition is proposed. The City of Alexandria and others dispute that claim. On May 16, 1973, the Interior Department advised our Subcommittee that it is reviewing the title question with the view "of determining whether, and in what manner, the matter might be referred to the Department of Justice" for resolution. The Corps has advised us that

it is refusing "to accept applications for new permits" in this area "pending resolution of title claims in the area on behalf of the United States". If the Corps' decision concerning the "grandfather" clause and its applicability to Robinson Terminal is allowed to stand, it could have an adverse effect on the United States' title claim. Moreover, if the Federal Government's claim proves valid—as we believe it will—and the terminal is built, the United States would then be faced with either allowing the terminal to remain, which might prove detrimental to its interests, or expending substantial funds to have it removed. Neither result would be desirable.

The Corps' September 4 reply now argues that such clauses are "common" in laws enacted by Congress "and regulations promulgated by various Federal agencies", and therefore, says the Corps, the grandfather clause in its May 27, 1970, regulations must be valid.

Congress, of course, can include in a statute various types of "grandfather" clauses. But this fact has no bearing on the issue. Congress did not provide for such a clause either directly or by implication in the 1899 Act.

The Corps' letter did not cite the regulations of other Federal agencies containing grandfather clauses, or indicate the authority for them. We are, however, unaware of any legal theory that allows Federal agencies to include such clauses at will in regulations without any statutory basis therefor.

Please review this matter and provide to us your opinion, views, and comments concerning (a) the legality of the "grandfather" clause in general, and (b) its application to the Robinson Warehouse situation.

Sincerely,

JOHN E. MOSS,
Member, Conservation and Natural Resources Subcommittee.

Enclosure.

Enclosures accompanying letter of September 17, 1973, from Congressman John E. Moss to Mr. Elmer B. Staats, Comptroller General of the United States:

1. Letter dated May 9, 1973, from Honorable John E. Moss to Lt. General F. J. Clarke, Chief of Engineers
2. Letter dated May 23, 1973, to Honorable John E. Moss from Colonel Frederick F. Irving, Assistant Director of Civil Works for Atlantic Divisions, Corps of Engineers
3. Letter dated June 1, 1973, from Honorable John E. Moss to Lt. General F. J. Clarke
4. Letter dated July 31, 1972 from Honorable John E. Moss to Lt. General F. J. Clarke
5. Letter dated September 4, 1973, to Honorable John E. Moss from Major General John W. Morris, Director of Civil Works, Department of the Army
6. Copy of House Report No. 91–917 (March 18, 1970) entitled "Our Waters and Wetlands": How the Corps of Engineers Can Help Prevent Their Destruction and Pollution".
7. Copy of House Report No. 92–1323 (August 10, 1972) entitled: "Increasing Protection for Our Waters and Wetlands: The Corps of Engineers".

U.S. GENERAL ACCOUNTING OFFICE,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., October 1, 1973.

B–179721.

Hon. JOHN E. MOSS,
Conservation and Natural Resources Subcommittee,
Committee on Government Operations,
House of Representatives.

DEAR MR. MOSS: Reference is made to your letter of September 17, 1973, which requests our opinion and comments concerning (a) the legality of the "grandfather clause" contained in regulations promulgated by the Corps of Engineers pursuant to 33 U.S.C. 403, and (b) its application to the Robinson Terminal Warehouse in Alexandria, Virginia.

We are presently studying the matter raised in your letter, and we will respond to your request as soon as possible.

Sincerely yours,

PAUL G. DEMBLING,
General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 31, 1973.

ROBINSON TERMINAL WAREHOUSE, INC.
Alexandria, Va.

GENTLEMEN: We have been informed by the Corps of Engineers of their view that no permit will be required from them for the work you propose to perform on the waterfront in the City of Alexandria. That work, we understand, involves the placing of pilings in the bed of the Potomac River, as it now exists.

This will inform you again, as was stated in meetings with you in past years, that the action of the Corps of Engineers relates only to their responsibilities in regard to navigability; that the United States of America is the owner of submerged lands in the bed of the Potomac River by virtue of cession from the State of Maryland for the seat of government, and those lands are under the jurisdiction of the Department of the Interior; that the placing of pilings on lands owned by the United States and which are under the jurisdiction of this Department without a permit from this Department shall be considered no less than a trespass, which shall not be mitigated by any action or inaction of the Corps of Engineers in regard to navigational servitude. We trust that this information will remove any doubts concerning the impact of the recent ruling by the Corps of Engineers in regard to their permit requirements.

We are informing the Corps of Engineers, by copy of this letter, of the requirements of the Department of the Interior in regard to our issuance of permits for utilization of lands in the bed of the Potomac River which are under the jurisdiction of this Department.

Sincerely yours,

CURTIS BOHLEN,
Assistant Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
October 5, 1973.

[For immediate release]

MORTON URGES ALEXANDRIA WATERFRONT INJUNCTION SUIT

Secretary of the Interior Rogers C. B. Morton today asked the Department of Justice to seek a court injunction to block development of a private facility on the Potomac River waterfront in Alexandria.

The Interior Secretary asked for action "at the earliest possible time" to halt enlargement by the Robinson Terminal Warehouse Corp. of a riverfront docking and storage structure for handling ship-borne cargo. This construction activity, which would double the size of the present facility, was begun after the company had received written objections by the Department to the proposed development.

The Secretary said new pilings have been driven recently for expansion of the company's structures on property bounded by Union, Pendleton and Oronoco Streets and the Potomac River.

Interior has contended for years that title to the riverbed parcel where piles have been driven—as well as to the adjacent uplands—belongs to the Federal Government.

Its claim is rooted in a royal grant issued by King Charles I of England to Lord Baltimore in 1632. The King's charter included a vast land and water area bounded on the south by the farther bank of the Potomac River, a region which later become the State of Maryland.

In 1789 Maryland ceded the riverbed up to the Virginia shore in that immediate area, to the United States, to become part of the District of Columbia. In 1791 President George Washington signed an executive order accepting Maryland's cession of the land.

Since then the shoreline has been altered, both by natural accretion of sediments and by landfill projects.

The Federal Government never has surrendered title or claim to this land, and the unresolved issue of title has been sharpened in recent years by conflicting plans for the increasingly valuable waterfront, adjoining Alexandria's historic Old Town.

"We must maintain the status quo with regard to new waterfront development," the Secretary said, "at least until further action is taken—quite soon, we hope—to resolve the larger question of who owns how much of the Alexandria waterfront."

He said that overall, title to some 40 acres of former riverbed land along the Potomac shore in Alexandria is involved in the dispute. Various high-density uses have been proposed, but have drawn stiff opposition from environmental and conservation groups and the City of Alexandria. Much sentiment has been expressed in recent years for park and recreational uses of the area.

The Federal Government is now undertaking positive steps to resolve this long-standing controversy, the Secretary said, noting that the Department of the Interior has urged for many years that park and recreation facilities be developed along this area of the Potomac River.

APPENDIX 3.—MATERIALS SUBMITTED BY THE U.S. DEPARTMENT OF DEFENSE IN RESPONSE TO SUBCOMMITTEE LETTER OF MAY 2, 1973

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., May 2, 1973.

Hon. WILLIAM P. CLEMENTS, Jr.,
Deputy Secretary of Defense,
The Pentagon, Washington, D.C.

DEAR SECRETARY CLEMENTS:

* * * * * * *

We are interested in learning whether the Defense Department is efficiently, effectively, and vigorously carrying out its responsibilities for preserving and enhancing valuable marshlands, estuarine areas, natural resources, and water and air quality at its installations in the Florida area.

Some of the other issues and matters that should be covered in your prepared statement are as follows:

1. (a) Please identify the DOD installations in the Florida area at which fish, wildlife, and game conservation plans have been agreed upon pursuant to 16 U.S.C. 670a; and those where no such plan has yet been agreed upon, and state what efforts have been made to execute such a plan.

(b) Please identify the DOD installations in the Florida area at which a plan for public outdoor recreation thereon has been agreed to pursuant to 16 U.S.C. 670c; and those installations where no such plan exists, and indicate why not.

(c) Please state the extent to which each of the military services permits the public to utilize regularly beach and other water related areas under its control in Florida. If there are such areas that are closed to the public, identify those areas by location and size, and set forth the reasons for such closure.

2. Please provide to us the data requested in the enclosed tables A and B. Also, please describe to us DOD efforts, to date, to control and prevent air and water pollution at DOD installations in the Florida area, the effectiveness thereof, and the adequacy of the funds available for this purpose.

3. A Department of the Air Force report, dated April 1970, on water pollution control requirements for Homestead Air Force Base in Dade County, states:

"The effluent from base sewage treatment and disposal plant discharges [about 3 mgd] into Biscayne Bay via Military Canal adjacent to the sewage plant after treatment and chlorination.

* * * * * * *

"Serious infiltration in the sanitary sewer system hydraulically overloads existing plant."

The third session of the July 1971 enforcement conferences held by the Environmental Protection Agency for Dade County provides that discharges into Biscayne Bay and its tributaries "shall be prohibited."

(a) What steps has the Air Force taken to comply with EPA's requirement? Please explain.

(b) Has the treatment plant been expanded and upgraded since the 1970 report to insure effective treatment of all wastes, including infiltration?

(c) Has the sanitary sewer system been repaired so as to eliminate infiltration? If not, please explain why not.

4. What are the sources of water supply for bases in South Florida, and do they provide good quality water, at adequate flows, all year?

5. Your views, comments, and recommendations on these and other matters affecting the environment and natural resources of Florida would be welcome.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

HOMESTEAD AIR FORCE BASE

The Committee indicated its specific interest with respect to pollution control at Homestead Air Force Base. In response, the following information is furnished:

a. In connection with waste treatment at Homestead AFB which currently has secondary treatment, the 1971 enforcement conference held by the Environmental Protection Agency for Dade County provided that discharges into Biscayne Bay and its tributaries be terminated. In view of this requirement, the Air Force has contacted the Dade County Planning Board to participate in an area-wide scheme for ocean outfall. A public interceptor is currently planned to cross the Homestead AFB and the projected date of completion of the overall project is dependent on the development of an area-wide system.

b. The Homestead treatment plant has been expanded and upgraded since 1970 to accommodate the total tributary flow including infiltration.

c. Complete elimination of infiltration on the gravity sewers is not practical. Major TV inspections of the sewer system have been completed, and portions of the collection system have been repaired and rehabilitated. Additional segments of the system are being rehabilitated as the need for repairs are discovered. Infiltration has been reduced considerably since the inception of the sewer rehabilitation program.

Attachment 1

WATER SUPPLIES TO MILITARY INSTALLATIONS

Concerning the interest of the Committee in the well water supplies for bases in South Florida, all of the Defense installations have high quality water from wells. With respect to Navy activities, Naval Air Station Key West, Naval Station Key West, Naval Hospital Key West, all obtain water from Navy wells at Florida City. Water is transported via pipeline approximately 140 miles to the activities. The water is considered to be of excellent physical and chemical quality and the supply at Florida City is of adequate capacity to provide for the needs of Naval activities in the foreseeable future.

Attachment 2

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ame & Location of Installation	Source of Effluents	Where Are Effluents Discharged? (State name of municipal sewer system, waterbody or ground.)	Nature of Effluent Discharged
McCoy AFB	1. Sew Trmt Plant	Bogey Creek	Treated Domestic Waste
Patrick AFB	1. Main Base Sewage Treatment Plant	Banana River	Treated Domestic Waste
	2. Cape Hart Sewage Treatment Plant	Banana River	Treated Domestic Waste
	3. Plating Shop	Banana River	Partially Treated Plating Waste
Tyndall AFB	1. Main Base Sew Trmt Plant	Gulf of Mexico	Treated Domestic Waste
	2. Sew Trmt Plant	East Bay	Treated Domestic Waste

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA
AS OF APRIL 30, 1973

irtment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
: & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Tyndall AFB Panama City, Florida (ADC)	5. Yes 6. Yes 7. Yes 8. Yes			

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ıme and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Tyndall AFB Panama City, Florida 32401 (ADC)	5. Laundry Heating facility	Smoke, CO, Particulates	Gas fired boiler
	6. Heating facility #1465	Smoke, CO, Particulates NO_x	Gas fired boiler
	7. Heating facility #1259	Smoke, CO, Particulates	Gas fired boiler
	8. Facility #266 Packing & Crating	Sawdust	Cyclone & Dust Collector

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

artment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
e & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Tyndall AFB Panama City; Florida /32401 (ADC)	1. Yes			
	2. No	Modification to Incinerator	5.0K	Sept 1973
	3. Yes			
	4. No	Install Floating Pans	31.0K	Dec 1974

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
me and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Tyndall AFB Panama City Florida 32401 (ADC)			
Facility 963	1. Recreation Shop	Dust	None
Incinerator	2. Bldg. 649	CO, Smoke, particulates NOx	None
30 POL storage tanks for mogas, av gas, jet fuel	3. POL Tanks	Vapors (hydrocarbon)	None
3 POL Tanks for storage of jet fuel (each of these three tanks is greater than the 40,000 gallon maximum EPA size and therefore requires floating pans)	4. POL Tanks	Vapors (hydrocarbon)	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

rtment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
& Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Jacksonville AFS Orange Park, Florida (ADC)	1. Yes 2. Yes			
Richmond AFS Richmond Heights, Florida ADC)	1. Yes			

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ıme and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Jacksonville AFS Orange Park, Florida (ADC)	1. Diesel genrerator (650KW) 2. Diesel generator (750KW)	Unburned hydrocarbons, particulates, NOx, CO Unburned hydrocarbon, particulates, NOx, CO	None None
Richmond AFS Richmond Heights, Florida (ADC)	1. Diesel generators (2,725KW ea.)	Unburned hydrocarbon particulates, NOx, CO	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

ırtment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
: & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
MacDill AFB, Tampa, Fla. (TAC)	1. Yes			
	2. No	Replace one, add afterburners and draft control to other (AF-128a)	$40,000 (FY 74 O&M)	November 1973
	3. No	Add afterburners, draft control (AF-128b)	$20,000 (FY 74 O&M)	November 1973
	4. No	Replacement	$35,000 (FY 74 O&M)	March 1974
	5. No	USAF share of new incinerator (AF-128c)	$40,000 (FY 73, O&M)	June 1974

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ıme and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
MacDill AFB, Tampa, Florida	1. Heating Plants, basewide	Particulates, NOx, SO_2	None (burning No. 2 fuel oil and gas)
	2. Incinerators (2, classified waste)	Particulates, NOx	Wetted Baffles
	3. Incinerator (pathological waste)	Particulates, NOx	Wetted Baffles
	4. Open furnaces (munitions disposal)	Particulates, HCl	None
	5. Open burning (refuse & classified Avon Park Bombing Range)	Particulate:	None. State of Florida Dept. and Rehabilitation handles USAF wastes

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA
AS OF APRIL 30, 1973

artment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
e & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Patrick AFB Cocoa Beach, Florida (AFSC)	1. Yes			
	2. Yes, Burns co-ordinated with Air Pollution control District	AFWL R&D Program	100,000	Programming indafinite
	3. No.	Put Top and burner on digestor	50,000	1 July 1975
	4. Yes			

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
me and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Patrick AFB, Cocoa Beach, Fla. (AFSC)	1. Heating Plant Bldg. 314	Smoke	Burning Natural Gas
	2. Firefighting training	Visible Smoke	Time of training is controlled
	3. FAC 650 & 1497 open Top Sewage Digestor	Odor	None
	4. Hospital Incinerator	Smoke	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA
AS OF APRIL 30, 1973

artment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
e & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Air Force Eastern Test Range Cocoa, Florida (AFSC)	1. Yes	Facility phased out		
	2. Yes			
	3. Yes			
	4. Yes			
	5. Yes			
	6. Yes			
	7. Yes, burns coordinated with Air Polln. District	AFWL R&D Program	100K	Programming indefinate

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
me and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Air Force Eastern Test Range Cocoa, Florida (AFSC)	1. Waste fuel Burn Complex	Smoke, Particulates	None
	2. Hypergolic Fuel Incinerator	NOx	None
	3. Waste Incinerator (OTTO fuel solids)	Smoke, Particulates	None
	4. Central Heating FAC 55055	Smoke, SO_2	None
	5. Critical Power Plant Facility	Smoke, Particulates	None
	6. Heating Plant #4	Smoke, Particulates	None
	7. Firefighting Training	Smoke, Particulates	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

artment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
e & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Eglin AFB Niceville, Florida (AFSC)	4. Yes = Time of burning is controlled			
	5. Yes - Training coordinated with Air Polln. Control Dist.	AFWL R&D Program	100K	Programming indefini
	6. No	Modify tanks AF Project No. 038B	117.0K	July 1973

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ıme and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Eglin AFB, Niceville, Florida (AFSC)	4. Controlled Woodland burning	Smoke, particulates	None
	5. Firefighting training fires	Smoke, particulates	None
	6. POL Tanks	Vapors	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA
AS OF APRIL 30, 1973

artment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
e & Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Eglin AFB Niceville, Florida / (AFSC)	1. Yes 2. Yes 3. No .	To discontinue use		1974

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TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
me and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Eglin AFB, Niceville, Florida	1. Building heated by natural gas or No. 2 Oil	Particulates, NO_x, SO_2	None (burning No. 2 fuel oil
	2. FAC No. 571 asphalt plant	Sand and Dust	Water Scrubbers
	3. Burner/Sawmill	Smoke	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA
AS OF APRIL 30, 1973

artment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
& Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
McCoy AFB Orlando, Florida (SAC)	1. yes 2. yes	AFWL R&D *	$100K	Programming indefinit (The Air Force Weapo Lab is studying the prototype unit locate at Chanute AFB and it is expected that corrections at other fire-fighting training locations will be mad within two years)
Eglin Auxiliary Field No. 9, Mary Ester, Florida (TAC)	1. yes 2. yes 3. yes			

* Air Force Weapons Lab is conducting a study of this type of project.

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ıme and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
McCoy AFB, Orlando, Florida (SAC)	1. Heating Plants, base-wide	Particulates, NOx, SO_2	None (Burning No. 2 fuel oil)
	2. Fire-fighting training pit	Particulates, unburned hydrocarbons, CO	None
Eglin Auxiliary Field No. 9, Mary Ester, Florida (TAC)	1. Heating Plants, base-wide	Particulates, NOx, SO_2	None (Burning No. 2 fuel oil and gas)
	2. Incinerators (classified waste)	Particulates, NOx	None
	3. Fire-fighting training pit	Smoke, CO, HC	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA
AS OF APRIL 30, 1973

rtment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(5)	(6)		
& Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a) Remedial Measures Needed to Meet Fully Such Requirements	(b) Cost of Remedial Measures	(c) Estimated Date When Remedial Measures Will Be Installed and Operating
Homestead AFB, Homestead, FL (TAC)	1. Yes 2. No 3. Yes	Replacement (AF-127)	$12,000 (FY 75 O&M)	June 1975
Lynn Haven AFB Bay County, Florida	1. No	Install floating pans (AF-172)	$532,000 (FY 74 MCP)	July 1974

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ıme and Location of Installation	Source of Emission	Nature of Emissions	Description of Existing Emission Controls
Homestead AFB Homestead, Florida (TAC)	1. Heating Plants, basewide	Particulates, NOx, SO_2	None (burning No. 2 fuel oil)
	2. Hospital incinerator	Smoke	None
	3. POL Storage Tanks	Hydrocarbons	Floating pans
Lynn Haven AF POL RDS (AFLC) Bay County, Florida	1. POL Storage Tanks	Hydrocarbons	None

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

epartment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(8)		
& Location of Installation	If Answer to Column (7) is No, State:		
	(a) Remedial measures needed to most fully such standards	(b) Estimated Cost of such remedial measures	(c) Estimated Date when remedial measures will be installed and operating
Eglin Aux 9 Field Okaloosa County, Florida	1. Land Application of Treated Waste	$859,000	Sept 1974
	2. Treatment for oil removal & connection to sanitary sewer	$48,000	July 1973
Homestead AFB Dade County, Florida	1. Participate in area-wide scheme being developed by Dade County Planning Board for ocean outfall	Cost not available	Date unknown - depends when communities finalize regional concept and begin construction of required facilities
MacDill AFB	1. Land Application of treated waste	$491,000	May 1975
	2. Sand filtration & subsurface disposal	84,000	May 1975
	3. Oil separation & tie-in connection to sanitary	20,000	May 1974

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

epartment of AIR FORCE
(Army, Navy or Air Force)

(1)	(5)	(6)	(7)
e & Location of Installation	Amount of Effluent (gallons per day)	Type of Treatment Provided Before Effluent is Discharged	Does This Treatment Fully Meet Federal and State Requirements?
Eglin Aux 9 Field Okaloosa County, Florida	1. 500,000	Biological Treatment with chemical coagulation	No
	2. 20,000	None	No
Homestead AFB Dade County, Florida	1. 2,400,000	Biological Treatment	Meets current Requirements but not proposed criteria
Lynn Haven AFS Lynn Haven, Florida	1. 500	Solids separation & subsurface percolation	Yes
MacDill AFB	1. 750,000	Biological Treatment	Volume discharge to Hillsbor Bay does not meet new requir ments
	2. 35,000	Biological Treatment	No - Not new requirement
	3. 15,000	None	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ame & Location of Installation	Source of Effluents	Where Are Effluents Discharged? (State name of municipal sewer system, waterbody or ground.)	Nature of Effluent Discharged
Eglin Aux 9 Field Okaloosa County, Florida	1. Sew Trmt Plant 2. Industrial - Aircraft Maintenance	Santa Rosa Sound Santa Rosa Sound	Treated Domestic Waste Aircraft Washrack Effluent
Homestead AFB Dade County, Florida	1. Sew Trmt Plant	Military Canal to Biscayne Bay	Treated Domestic Waste
Lynn Haven AFS Lynn Haven, Florida	1. Septic Tank	Ground	Settled Domestic Waste
MacDill AFB	1. Sew Trmt Plant 2. Five (5) Remote area Sew Trmt Plants 3. Industrial Operations	35% - ground application 65% - Hillsboro Bay Various Natural Drainage Basins with subsequent runoff to Hillsboro Bay Hillsboro Bay	Treated Domestic Waste Untreated Washrack Waste

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of AIR FORCE
(Army, Navy, or Air Force)

(1)	(8)		
& Location of Installation	If Answer to Column (7) is No, State:		
	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial measures	(c) Estimated Date when remedial measures will be installed and operating
Cape Kennedy AFS Brevard County, Florida	1. Polishing pond 2. None required 3. None required	$ 34,000	1 July 1974
Eglin AFB Okaloosa County, Florida	1. Land application of treated effluent	$650.000	1 July 1974
	2. Land application of treated effluent	$700,000	1 July 1974
	3. Flow to be diverted to Plew Plant with subsequent land application of treated effluent		1 July 1974

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

partment of AIR FORCE
(Army, Navy or Air Force)

(1)	(5)	(6)	(7)
& Location of Installation	Amount of Effluent (gallons per day)	Type of Treatment Provided Before Effluent is Discharged	Does This Treatment Fully Meet Federal and State Requirements?
Cape Kennedy AFS Brevard County, Florida	1. 250,000 gpd	Biological Treatment	Not completely - excess suspended solids
	2. Combined Flow: 27,000 gpd	Biological Treatment	Yes
	3. 800 gpd	Neutralization	Yes
Eglin AFB Okaloosa County, Florida	1. 600,000 gpd	Biological Treatment	No
	2. 750,000 gpd	Biological Treatment	No
	3. 500,000 gpd	Biological Treatment	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

epartment of AIR FORCE
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
ame & Location of Installation	Source of Effluents	Where Are Effluents Discharged? (State name of municipal sewer system, waterbody or ground.)	Nature of Effluent Discharged
Cape Kennedy AFS Brevard County, Florida	1. Sew Trmt Plant #1	Banana River	Treated Domestic Waste
	2. 9 Package Plants serving assembly areas	Natural Drainage Basin	Treated Domestic Waste
	3. Industrial Complex	Ocean Outfall	Nautralized Acids & Bases
Eglin AFB Okaloosa County, Florida	1. Main Base Sew Trmt Plant	Choctawhatchee Bay	Treated Domestic Waste
	2. Plew Residential Plant	Choctawhatchee Bay	Treated Domestic Waste
	3. Bens Lake Plant	Choctawhatchee Bay	Treated Domestic Waste

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of _____
(Army, Navy, or Air Force)

(1)	(8)		
e & Location of Installation	If Answer to Column (7) is No, State:		
	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial measures	(c) Estimated Date when remedial measures will be installed and operating
Patrick AFB	1. No required 2. None required 3. Removal of heavy metals	$ 56,000	Sept 1974
Tyndall AFB Panama City, Florida	1. Land application of treated effluent 2. Combine waste flow at Main Base Plant for land application of treated effluent	$1,071,000 see item 1,, above	May 1974 see item 1, above

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

epartment of AIR FORCE
(Army, Navy or Air Force)

(1)	(5)	(6)	(7)
& Location of Installation	Amount of Effluent (gallons per day)	Type of Treatment Provided Before Effluent is Discharged	Does This Treatment Fully Meet Federal and State Requirements?
McCoy AFB	1. 500,000	Biological Treatment	Yes
Patrick AFB	1. 560,000	Biological Treatment	Yes
	2. 600,000	Biological Treatment	Yes
	3. 28,000	Alkaline Chlorination for removal cyanides	No
Tyndall AFB	1. 600,000	Biological Treatment	No
Panama City, Florida	2. 300,000	Biological Treatment	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
Name & Location of Installation Jacksonville, Fla	Source of Effluenets	Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	Nature of Effluent Disc
Naval Air Station, Cecil Field	Bldgs. 14, 825, 815	Toswell Creek	oily waste water
Naval Air Station, Cecil Field	Jet engine test cell cooling tower	Sal Taylor Creek	oily waste water
Naval Air Station	Bldg. 24	St. John's River	domestic waste
Naval Air Station	Aircraft washrack	St. John's River	washrack waste wate
Naval Air Station	Swimming pool filter	St. John's River	filter backwash
Naval Air Station	Jet engine test cell cooling tower	St. John's River	oily waste water
Naval Air Station	Jet engine test cell cooling tower	St. John's River	oily waste water
Naval Air Station	Naval Air Rework Fac.	St. John's River	Treated industrial waste water occasionally exceeds standards

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation Jacksonville, Fla.	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment Fu Meet Federal and State Requirements
Naval Air Station, Cecil Field	10,000	None	No
Naval Air Station, Cecil Field	10,000	Inadequate oil/water separator	No
Naval Air Station	2,000	Septic tank without drainfill	No
Naval Air Station	5,000	None	No
Naval Air Station	12,000	None	No
Naval Air Station	100,000	None	No
Naval Air Station	300,000	None	No
Naval Air Station	3,500,000	Various Industrial waste treatment processes	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATION (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(8)		
Name & Location of Installation	If answer in Column (7)is No, State:		
Jacksonville, FL	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial standards	(c) Estimated Date when remedial measures will be installed & operating
Naval Air Station, Cecil Field	Install oil/water separator and connect to sanitary sys.	$53,000	June 73
Naval Air Station, Cecil Field	Install new oil/water separator	$19,000	Oct 73
Naval Air Station	Connect to sanitary sewer	$13,000	May 73
Naval Air Station	Install oil/water sep. and conn. to san. sew.	$56,000	May 73
Naval Air Station	Connect to sanitary sewer	$7,000	July 74
Naval Air Station	Install oil/water separator and provide chemical treatment	$12,000	May 73
Naval Air Station	Install oil/water separator and provide chemical treatment	$10,000	May 73
Naval Air Station	Improvements in metering & processes in waste	$486,000	July 76

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TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
Name & Location of Installation Jacksonville, Fla.	Source of Effluenets	Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	Nature of Effluent Dis
9) Naval Fuel Depot	Septic tanks without drainfield	St. John's River	domestic sewage
0) Naval Fuel Depot	Fuel tank cleaning	St. John's River	oily waste water

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(5)	(6)	(7)
Name & Location of Installation Jacksonville, Fla.	Amount of Effluent (gallons per day)	Type of Treatment Provided Before Effluents are Discharged	Does this Treatment Fi Meet Federal and Stat Requirements
9) Naval Fuel Depot	5,000	Septic tanks	No
0) Naval Fuel Depot	4,000	None	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATION (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(8)		
Name & Location of Installation	If answer in Column (7)is No, State:		
Jacksonville, Fl	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial standards	(c) Estimated Date when remedi measures will be installed operating
) Naval Fuel Depot	Connect to City of Jacksonville sewerage system	$152,000	July 73
) Naval Fuel Depot	Install oil/water separator	$121,000	June 74

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation Key West, Fla.	(2) Source of Effluenets	(3) Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	(4) Nature of Effluent Disc
Naval Air Station	Bldgs. A-937, A-1019, A-902	Ground	domestic sewage
Naval Air Station	Swimming pool filters	Atlantic Ocean via storm sewer	filter backwash
Naval Station	Bldgs. 11, 13, & 137A	Ground	domestic sewage
Naval Station	Bldg. 339	Atlantic Ocean via storm sewer	domestic sewage

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation Key West, Fla.	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment I Meet Federal and Stat Requirements
(1) Naval Air Station	4,000	Septic tanks	No
(2) Naval Air Station	10,000	None	No
(3) Naval Station	3,000	Septic tank	No
(4) Naval Station	5,000	None	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATION (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(8)		
Name & Location of Installation	If answer in Column (7)is No, State:		
Key West, FL	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial standards	(c) Estimated Date when remedi measures will be installe operating
1) Naval Air Station	Construct new drainfield	$21,000	July 73
2) Naval Air Station	Connect to sanitary sewer	$45,000	July 73
3) Naval Station	Connect to sanitary sewer	$5,000	July 73
4) Naval Air Station	Install pump station to connect with sanitary sewer	$10,000	July 73

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
Name & Location of Installation	Source of Effluenets	Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	Nature of Effluent Dis
Mayport, Fla.			
(1) Naval Station	Oil treatment facility	St. John's River	Oily waste
(2) Naval Fleet Training Ctr.	Electronics Lab.	St. John's River	Laboratory waste
Pensacola, Fla.			
(1) Naval Air Rework Fac.	Painting fac.	Pensacola Bay via storm sewer	paint stripping waste water
(2) Naval Air Station Ellyson Field	Auto washrack	Ground	auto washrack waste water
(3) Naval Air Station	Rain water run-off from pavement areas	Pensacola Bay via storm sewer	oily storm wate

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment Meet Federal and St Requirements
Mayport, Fla.			
(1) Naval Station	5,000	Interim waste oil treat. fac.	No
(2) Naval Fleet Training Ctr.	Varies (small)	None	No
Pensacola, Fla.			
(1) Naval Air Rework Fac.	40,000	None	No
(2) Naval Air Station Ellyson Field	5,000	None	No
(3) Naval Air Station	Varies	None	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATION (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(8)		
Name & Location of Installation	If answer in Column (7) is No, State:		
	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial standards	(c) Estimated Date when remed measures will be installe operating
Mayport, FL			
(1) Naval Station	Provide oil emulsion treatment plant	$42,000	Jan 74
(2) Naval Fleet Training Ctr.	Connect to sanitary sewer	$6,000	Jan 74
Pensacola, FL			
(1) Naval Air Rework Facility	Connect to industrial sewer	$58,000	Jan 74
(2) Naval Air Station, Ellyson Field	Install oil/water separator	$10,000	July 73
(3) Naval Air Station	Install oil/water separator	$25,000	June 73

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
Name & Location of Installation Pensacola, Fla.	Source of Effluenets	Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	Nature of Effluent Disc
(4) Naval Air Station Saufley Field	aircraft washrack	Perdido Bay via storm sewer	aircraft washrack waste water
(5) Navy Public Work Ctr.	Water treatment filter	Perdido Bay via storm sewer	filter backwash
(6) Navy Public Works Ctr.	Cooling towers (various locations)	Pensacola Bay via storm sewer and ground disposal	cooling tower bleed off
(7) Navy Public Works Ctr.	Garbage can wash-rack bldg. 1612	Pensacola Bay via storm sewer	garbage can wash water
(8) Navy Public Works Ctr.	Boiler plants bldg. 1857, 913, 804 & B458	Various location surface water	boiler bleed off

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation Pensacola, Fla.	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment M Meet Federal and Stat Requirements
(4) Naval Air Station Saufley Field	3,000	None	No
(5) Navy Public Works Ctr.	5,000	None	No
(6) Navy Public Works Ctr.	Varies	None	No
(7) Navy Public Works Ctr.	Varies	None	No
(8) Navy Public Works Ctr.	Varies	None	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATION (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(8)		
Name & Location of Installation	If answer in Column (7) is No. State:		
	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial standards	(c) Estimated Date when remedial measures will be installed operating
Pensacola, Fla.			
1) Naval Air Station Saufley Field	Install oil/water separator with discharge to storm sewer	$ 5,000	July 73
2) Navay Public Works Ctr.	Provide drying lagoon	$ 27,000	Sep 73
3) Navy Public Works Ctr.	Connect to sanitary sewer	$ 228,000	July 74
4) Navy Public Works Ctr.	Install grease and oil/ water separator	$ 29,000	July 74
5) Navy Public Works Ctr.	Connect to sanitary sewer	$ 32,000	Nov 73

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment Meet Federal and State Requirements
Pensacola, Fla			
) Naval Air Station, Saufley Field	2,000	Oil/water separators	Yes
) Navy Public Works Center	302,000	Secondary treatment provided by the City of Pensacola, Fla.	Yes
) Navy Public Works Center	1,100,000	Industrial waste treatment plant	Yes
) Navy Public Works Center	1,850,000	Secondary treatment plant	Yes
) Navy Public Works Center	50,000	Industrial waste treatment plant	Yes
SUBTOTAL COMPLETED PROJECTS	$4,823,000		

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(2)	(3)	(4)
Name & Location of Installation	Source of Effluenets	Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	Nature of Effluent Disc
Orlando, Fla.			
(1) Naval Laboratory	Navy laboratory	Lake Gem Mary	Chemical waste
Panama City, Fla.			
(1) Naval Communications Training Center	Auto washrack	St. Andrews Bay via storm sewer	Auto washrack waste water

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(5)	(6)	(7)
Name & Location of Installation	Amount of Effluent (gallons per day)	Type of Treatment Provided Before Effluents are Discharged	Does this Treatment Meet Federal and State Requirements
Orlando, Fla.			
(1) Naval Laboratory	7,5000	None	No
Panama City, Fla.			
(1) Naval Communications Training Center	Varies	None	No

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATION (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1)	(8)		
Name & Location of Installation	If answer in Column (7) is No, State:		
	(a) Remedial measures needed to meet fully such standards	(b) Estimated Cost of such remedial standards	(c) Estimated Date when remedial measures will be installed operating
Orlando, Fla.			
Naval Laboratory	Connect to city of Orlando sewer system	$37,000	Aug 74
Panama City, Fla.			
Naval Communications Training Center	Install oil/water sep.	$ 7,000	Jul 74

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TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE AS OF APRIL 30, 1973

Department of Navy (Army, Navy, or Air Force) SET II

(1) Name & Location of Installation	(2) Source of Effluenets	(3) Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	(4) Nature of Effluent Discha
Jacksonville, Fla.			
) Naval Air Station, Cecil Field	washracks	sanitary sewers	washrack oily waste wate
) Naval Air Station	Naval Air Rework Fac.	St. John's River	industrial sewage

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation Jacksonville, Fla.	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment Meet Federal and St Requirements
) Naval Air Station, Cecil Field	10,000	oil/water separator	Yes
) Naval Air Station	8,500,000	secondary treatment with polishing ponds	Yes

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE
AS OF APRIL 30, 1973

Department of Navy (Army, Navy, or Air Force)

SET II

(1) Name & Location of Installation Key West, Fla.	(2) Source of Effluenets	(3) Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	(4) Nature of Effluent Disch
(1) Naval Air Station	Naval Air Station	Atlantic Ocean	domestic & industrial sew
(2) Naval Station	Naval Station	Atlantic Ocean	domestic & industrial sew
(3) Naval Station	Buildings 99 & 633	Sanitary sewer system	oily waste water
(4) Naval Station	Laundry	Sanitary sewer system	oily waste water

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FORCE AS OF APRIL 30, 1973

Department of Navy (Army, Navy, or Air Force)

SET II

(1) Name & Location of Installation Milton, Fla.	(2) Source of Effluenets	(3) Where are effluents Discharged? (State name of municipal sewer system, water body or ground)	(4) Nature of Effluent Discha
Naval Air Station, Whiting Field	garbage container cleaning washrack	station sanitary sewer	garbage container cleani wastewater
Naval Air Station, Whiting Field	bldg. 2805	ground	domestic sewage

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation Milton, Fla.	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment Meet Federal and St Requirements
(1) Naval Air Station, Whiting Field	5,000	screened	Yes
(2) Naval Air Station, Whiting Field	10,000	septic tank-drainfield	Yes

TABLE A. DATA CONCERNING WATER POLLUTION CONTROL REQUIREMENTS
AT DEFENSE DEPARTMENT INSTALLATIONS (ARMY, NAVY, AND AIR FORCE) IN FLORIDA
AS OF APRIL 30, 1973

Department of Navy
(Army, Navy, or Air Force)

(1) Name & Location of Installation	(5) Amount of Effluent (gallons per day)	(6) Type of Treatment Provided Before Effluents are Discharged	(7) Does this Treatment Fl Meet Federal and Stat Requirements
Key West, Fla.			
(1) Naval Air Station	400,000	secondary treatment	Yes
(2) Naval Station	600,000	secondary treatment	Yes
(3) Naval Station	5,000	oil/water separator	Yes
(4) Naval Station	50,000	none	Yes

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force)

(1) Name and Location of Installation	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
Jacksonville, Fla.			
. Naval Air Station	Burning of Dunnage	Smoke	None
. Naval Air Station	Classified Waste Incinerator	Particulates	None
. Naval Hospital	Pathological Waste Incinerator	Particulates	None
Key West, Fla.			
. Naval Hospital	Pathological Waste Incinerator	Smoke and Noxious Odors	None
. Naval Station	Occasional Burning of Rubbish	Smoke	None
Naval Station	Classified Waste Incinerator	Smoke	None
. Naval Air Station	Classified Waste Incinerator	Smoke	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
me and Location of tallation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a)	(b)	(c)
Jacksonville, Fla.		Remedial Measures Needed to Meet Fully Such Requirements.	Cost of Remedial Measures.	Estimated Date When Remedial Measures Will Be Installed and Operating.
1. Naval Air Station	No	Mobile Shredder and Sanitary Landfill or Contract Disp.	$ 150,000	Jan 75
. Naval Air Station	No	New Incinerator	$ 60,000	July 75
. Naval Hospital	No	New Incinerator	$ 45,000	July 74
Key West, Fla.				
. Naval Hospital	No	New Incinerator	$ 10,000	July 74
. Naval Station	No	Refuse Incinerator	$1,648,000	July 74
. Naval Station	No	New Incinerator	$ 6,000	July 75
. Naval Air Station	No	Shredder	$ 14,000	Sep 75

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force)

(1) me and Location of Installation	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
Mayport Fla.			
. Naval Fleet Training Center	Firefighting Training	. Smoke	Temporary Water Spray Nozzles
Milton, Fla.			
. Naval Air Station Whiting Field	Classified Waste Incinerator	Fly Ash and Smoke	None
. Naval Air Station Whiting Field	Aviation Fuel Storage	Aviation Fuel Vapors (Hydrocarbons)	None
Pensacola, Fla.			
1. Naval Communication Training Center	Incinerator	Particulates	None

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
me and Location of stallation Mayport, Fla.	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State: (a) Remedial Measures Needed to Meet Fully Such Requirements.	(b) Cost of Remedial Measures.	(c) Estimated Date When Remedial Measures Will Be Installed and Operating.
1. Naval Fleet Training Ctr. Milton, Fla.	No	Smoke Collection System and Afterburner	$ 909,000	Oct 74
1. Naval Air Station Whiting Field	No	Paper Destructor	$ 5,000	Aug 75
2. Naval Air Station Whiting Field Pensacola, Fla.	No	Floating Covers	$m 11,000	Jan 78
1. Naval Communication Training Center	No	New Incinerator	$ 24,000	Aug 73

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

SET IV

Department of NAVY
(Army, Navy, or Air Force)

(1) Name and Location of Installation	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
Jacksonville, FL			
Naval Air Station (Cecil Field)	Heating Plant	Plant larger than ten million BTU per hour input	Smoke Detector and Recorder
Naval Air Station (Cecil Field)	Classified Material Incinerator	Smoke and Particulates	Shredder
Naval Air Station	Heating Plants	Plants larger than ten million BTU per hour input	Smoke Detector and Recorder
Naval Hospital	Boiler Plant	Plant larger than ten million BTU per hour input	Smoke Detector and Recorder

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
Name and Location of Installation Jacksonville, FL	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State: (a) Remedial Measures Needed to Meet Fully Such Requirements.	(b) Cost of Remedial Measures.	(c) Estimated Date When Remedial Measures Will Be Installed and Operating.
Naval Air Station (Cecil Field)	Yes			
Naval Air Station (Cecil Field)	Yes			
Naval Air Station	Yes			
Naval Hospital	Yes			

SET IV

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force)

(1) ame and Location of Installation Key West, FL	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
Naval Station	Boiler Plant	Plant larger than ten million BTU per hour input	Smoke Detector and Recorder

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
Name and Location of Installation Mayport, FL	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State: (a)	(b)	(c)
. Naval Station	Yes	Remedial Measures Needed to Meet Fully Such Requirements.	Cost of Remedial Measures.	Estimated Date When Remedial Measures Will B Installed and Operating.

SET IV

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force)

(1) ame and Location of Installation Mayport, FL	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
Naval Station	Heating Plant	Plant larger than ten million BTU per hour input	Smoke Detector and Recorder

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
Name and Location of Installation Key West, FL	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State: (a) Remedial Measures Needed to Meet Fully Such Requirements.	(b) Cost of Remedial Measures.	(c) Estimated Date When Remedial Measures Will Be Installed and Operating.
Naval Station	Yes			

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force)

(1) Name and Location of Installation	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
Milton, FL			
1. Naval Air Station (Whiting Field)	Burning of Refuse	Smoke and Particulates	Sanitary Landfill
Orlando, FL			
1. Naval Training Center	Pathological Waste Incinerator	Smoke, Particulates, and Noxious Odors	New Incinerator

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TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
Name and Location of Installation	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State:		
		(a)	(b)	(c)
Milton, FL				
Naval Air Station (Whiting Field)	Yes	Remedial Measures Needed to Meet Fully Such Requirements.	Cost of Remedial Measures.	Estimated Date When Remedial Measures Will B Installed and Operating.
Orlando, FL				
Naval Training Center	Yes			

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

SET IV

Department of NAVY
(Army, Navy, or Air Force)

(1) Name and Location of Installation Pensacola, FL	(2) Source of Emission	(3) Nature of Emissions	(4) Description of Existing Emission Controls
1. Naval Air Station (Ellyson Field)	Burning of Classified Waste	Smoke and Fly ash	Shredder
2. Naval Air Station	Classified Waste Incinerator	Smoke	New Incinerator
3. Naval Air Station (Saufley Field)	Burning of Classified Waste	Smoke	Incinerator
4. Naval Communication Training Center	Burning of Refuse	Smoke, Fly ash, and Particulates	Sanitary Landfill
5. Navy Public Works Center	Burning of Refuse	Smoke	Sanitary Landfill

TABLE B. DATA CONCERNING AIR POLLUTION CONTROL REQUIREMENTS AT DEFENSE DEPARTMENT INSTALLATIONS AND FACILITIES IN FLORIDA AS OF APRIL 30, 1973

Department of NAVY
(Army, Navy, or Air Force

(1)	(5)	(6)		
ıme and Location of stallation Pensacola, FL	Do the Controls Referred to in Column (4) Meet Federal and State Requirements?	If Answer to Column (5) is No, State: (a) Remedial Measures Needed to Meet Fully Such Requirements.	(b) Cost of Remedial Measures.	(c) Estimated Date When Remedial Measures Will Be Installed and Operating.
Naval Air Station (Ellyson Field)	Yes			
Naval Air Station	Yes			
Naval Air Station (Saufley Field)	Yes			
Naval Communication Training Center	Yes			
Navy Public Works Center	Yes			

SUBTOTAL OF COMPLETED PROJECTS - $217,000

APPENDIX 4

PART A.—MATERIALS SUBMITTED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN RESPONSE TO SUBCOMMITTEE LETTER OF APRIL 25, 1973

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 25, 1973.

Mr. JACK RAVAN,
Regional Administrator, Environmental Protection Agency,
Atlanta, Ga.

DEAR MR. RAVAN:

* * * * * * *

Some of the issues and matters that should be covered in your prepared statement are as follows:

1. On February 21, 1973, EPA Administrator Ruckelshaus issued "Decision Statement No. 4, EPA Policy to Protect the Nation's Wetlands" (see App. 17, part 3, hearings, entitled "Mercury Pollution and Enforcement of the Refuse Act of 1899," p. 1477, copy enclosed):

(a) Please state what steps you have taken to implement this policy fully concerning (1) programs administered by EPA; and (2) programs, such as permit and license applications, administered by other agencies, which affect wetlands.

2. Please provide to us the information requested on enclosed Tables A and B. (Please, if necessary, consult with appropriate State and local officials to obtain and verify this data).

3. There have been three enforcement conference sessions in the matter of pollution of the navigable waters of Dade County, Fla., and tributaries, embayments, and coastal waters. Following each session a summary was issued which concluded in each case that:

"1. Pollution of the navigable waters in and adjacent to Dade County, Fla., including the Atlantic Ocean, Biscayne Bay, and tributaries thereto, which endangers health and welfare of persons, is occurring and is subject to abatement under the Federal Water Pollution Control Act. This pollution is caused by discharges from numerous municipal, domestic, and industrial sources within Dade County.

"2. Measures taken to abate this pollution have been inadequate.

"3. The nature of delays being encountered in pollution abatement are: complexity of the problem; lack of effective planning; financing, and enforcement of pollution control law; and lack of a commitment by the community to meet the pollution problem and abate it."

On October 18, 1971, Administrator Ruckelshaus approved these conclusions, among others, and eleven recommendations. Please state the extent of compliance achieved, or not achieved, to date on each of the 11 recommendations.

4. In a March 8, 1973, report to a Senate subcommittee, the General Accounting Office found that:

In June 1971, the Florida Department of Pollution Control (FDPC) sent to EPA its fiscal year 1972 water pollution control plan listing 106 applicants for fiscal year 1972 Federal grant funds;

The plan did not include the State attorney general's certification that the plan was "legally enforceable";

The certification was later sent to EPA in October 1971 and EPA approved the plan in November 1971;

The FDPC failed to certify any of the 106 grant applicants "as having a priority over" others in the State until March 1972 when it certified 53 grant applications;

Many of the 53 applications failed to comply with Federal requirements that (i) FDPC show the "projects were included in interim basin plans"; (ii) "environmental assessment statements" are included with the applications; and (iii) the applications include "State clearinghouse statements";

Most of the applicants furnished the data between October and December 1972; and

As of December 31, 1972, EPA obligated all of Florida's fiscal year 1972 allotment of $65,134,450 for waste treatment works.

(a) Please provide to us a copy of the fiscal year 1972 FDPC plan listing the 106 applicants;

(b) Please provide to us a list of the 53 certified applicants indicating which of them were approved for an EPA grant, the amount of the grant and the percentage of Federal funds granted;

(c) What steps has your agency and the FDPC taken to speed up the process in which grant applications are submitted to, and approved by, EPA?

5. The Izaak Walton League recently expressed great concern about the water quality and health aspects of various types of canals developed in the Florida area. The League said:

"The traditional way of developing in Florida is through the finger-fill canal, man-made waterways to permit home buyers to moor their boats in the back yard. There is considerable evidence that these canals not only destroy the natural resources of submerged lands but also threaten the health of people who live along them. For example, a study by the Florida branch of the Conservation Foundation shows that gas gangrene bacteria and other dangerous bacteria exist in the bottoms of these canals.

"The sequence of physical events runs something like this. Dredged materials from the newly dug canals are piled 6 to 7 feet above water levels so as to protect homes from flooding and to allow use of septic tanks. Most of these canals are dead-end affairs and are often as deep as 20 feet and seldom less than 15 feet deep. As the subdivision grows and the land becomes saturated with wastes from the septic tanks, excess nutrients seep into the canals consuming the oxygen in the water. The problem is compounded because due to lack of tidal flushing no new water enters the canal from the adjacent bay or other waterways. The canal then becomes anerobic. Because of the depths, sunlight cannot stimulate the growth of bottom vegetation and the end result is the presence of a blue-green algae, a biological soup in which diseases dangerous to human beings prosper.

"In Broward County, for example, there has been a significant number of hepatitis cases and the State Health Department has recommended immediate gamma globulin shots for anyone who comes in contact with canal waters. Other disease bacteria have been isolated in canals throughout Florida."

On January 18, 1973, the U.S. Bureau of Sport Fisheries and Wildlife also expressed concern about these canals in a letter to the Corps of Engineers (copy enclosed). In addition, a 1972 report by the Environmental Information Center of the Florida Conservation Foundation states "that the water in most of Florida's canals cannot meet Federal and State water quality standards, and canal characteristics may make it impossible for these waterways ever to achieve these minimum legal standards."

(a) Do you agree with the above comments?

(b) To what extent has your agency studied or surveyed this problem in general, or in regard to particular canals?

(c) What enforcement actions has EPA taken or does it contemplate against developers in Florida whose canals create such health and water quality problems? Please explain.

(d) We understand that "dead end" canals are being developed in a number of Florida developments, such as ITT Palm Coast, Palm Ridge Subdivision on Sanibel Island, and at Ochapee, Fla., and that the Corps' General Counsel, in a June 20, 1972, letter to a Florida assistant attorney general, concluded that "artificial canals are clearly subject to the" Corps' regulatory authority. Please provide to us copies of your agency's comments to the Corps, and others, concerning canals at these or other Florida developments.

6. On February 28, 1972, the FDPC found ITT's Palm Coast canal system "presently under construction * * * to be acceptable subject to" several conditions, including weekly monitoring of the waters from the canals and the Intracoastal Waterway and the issuance of a Corps permit.

(a) Do you consider this canal system "acceptable"?

(b) If the answer to (a) is yes, please explain your reasons.

(c) If the answer to (a) is no, please state what steps must be taken before EPA could find them "acceptable."

(d) What provision has been made at the Palm Coast development for a sewage disposal system that will insure that none of the sewage from individual homesites will be discharged directly, or through a septic system, into these canals.

7. We understand that FDPC has requested EPA to approve FDPC to administer the NPDES permit program, with several conditions. Please indicate what these are and whether they can be accepted by EPA.

8. (a) Please state the amount of EPA's funding contribution to the Florida air program for fiscal year 1972 and 1973 and whether this level of funding will be increased, decreased, or remain the same in fiscal year 1974.

(b) What is the current status of Florida's air implementation plan?

(c) If the Federal funding level for fiscal year 1974 is decreased, what effect will this have on Florida achieving the plans schedules and goals in a timely fashion?

9. We understand that EPA has recently terminated a program whereby it assigns EPA employees to help the States, at no cost to the State. Please explain the purpose of this program, it achievements, and why it is being terminated, except where the State pays the Federal employees.

10. (a) How many persons in your region were available on July 1, 1972 to help States and local communities on solid waste problems?

(b) How many persons will be available for this purpose on July 1, 1973?

(c) List each solid waste grant and the purpose of each provided to Florida in fiscal year 1972 and 1973 and the sums planned for fiscal year 1974.

11. We have your region's quarterly enforcement reports (water) for the first, second, and third quarters of 1972.

(a) Please provide to us a copy of such reports for the fourth quarter of 1972 and the first quarter of 1973.

(b) Please provide to us a copy of your region's enforcement report (air) for the first quarter of 1973.

12. Please provide a statement to us indicating (a) the conditions of the consent decree in the *Florida Power and Light* case and (b) whether the company is in full compliance with each of the conditions.

13. Please describe to us EPA's actions in your region concerning oil pollution cleanup and enforcement and the extent to which your agency, the Coast Guard, and the U.S. Attorney cooperate in enforcing Public Law 92–500 and the Refuse Act against oil dischargers.

14. Please advise us on the extent of pollution from feed lot activities in the Florida area, indicating the areas where feed lots are concentrated, and on the actions taken or planned to curb this problem.

15. (a) What steps have you taken thus far in your region to implement fully section 403 of Public Law 92–500 regarding the discharge of pollutants into the ocean, territorial sea, and contiguous zone waters?

(b) Please furnish to us the information concerning dumping permits requested in the attached Table C, together with a copy of each such permit which has been issued; or if none has been issued, a copy of the permit form.

16. Please describe the studies, investigations, or other actions, your office has undertaken thus far in the Florida area to determine the impact which the discharge of sewage from vessels has or will have on Florida area waters, and identify the areas of greatest concern.

17. (a) Please provide to us a detailed summary for each Federal installation in the Florida area, the air and water abatement actions initiated to date pursuant to Executive Order 11507 (35 F.R. 2573; 3 CFR 277) and the stage of completion and the abatement actions still to be taken at each such installation.

(b) Please describe in detail your region's efforts to fully enforce the provisions of section 306 of the Clean Air Act, as amended, and section 508 of Public Law 92–500.

18. We would also welcome your views, comments, and recommendations on other matters under your jurisdiction.

Please include with your statement any reports, studies, or other documents which would be helpful to us.

* * * * * * *

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

S[redacted]ENT

OF

MR. JACK E. RAVAN, REGIONAL ADMINISTRATOR

REGION IV

ENVIRONMENTAL PROTECTION AGENCY

ATLANTA, GEORGIA

Prepared for the Honorable Henry S. Reuss, Chairman of the
Conservation and National Resources Subcommittee
Committee on Government Operations
Miami, Florida
May 25 - 26, 1973

QUESTION NUMBER 1

(a)(1) Prior to the issuance of a formal policy relative to the protection of wetlands, Region IV of EPA had developed a strong position with respect to wetlands preservation. As a result, the formal declaration of policy by the Administrator served to strengthen Regional policy by providing advance warning to all prospective developers that EPA would make a maximum effort to minimize the alteration of the Nation's Wetlands.

In the administration of the Public Law 92-500 construction grants program for sewage treatment plants, we have taken the following steps to insure that the Wetlands Policy is adhered to and that its principles are considered in the site development during the early planning stages:

1. Copies of the Policy Statement are being sent to all State pollution control agencies and known engineering consultants. We will emphasize the significance of the policy guidelines and will insist that they be followed whenever upland sites are available.

2. In instances where the use of wetland areas are absolutely necessary, to comply with State-Federal pollution laws, the views and recommendations of the U.S. Departments of Interior and Commerce will be solicited to assure that the final plan will be the least damaging alternative. This will result in a savings of time and effort by all agencies concerned in those cases when a Corps of Engineers'

Section 10 permit is required, since all environmental agencies will have already evaluated the plan. A copy of the Regional Directive establishing the procedure for implementing the Wetlands Policy in the construction grants program is attached. (See Attachment 1(a) - 1.)

(2) In the review of applications and permits administered by other agencies, we work very closely with appropriate Federal and State agencies to assure compliance with the Wetlands Policy. In Region IV, we have worked out an informal arrangement with the Bureau of Sport Fisheries and Wildlife and the National Marine Fisheries Service, whereby EPA concentrates on determining the effects of proposed developments on water quality and utilize their investigative and technical capability to determine the effects of construction activities on wetlands and related aquatic resources. This not only makes maximum use of available manpower resources but enhances efficiency of operation by avoiding duplication of effort. We will continue to coordinate our review with these agencies and make joint field investigations in the case of large projects which involve significant wetland resources. The new EPA Wetland Policy will strengthen this working relationship.

The following table reflects the number of Corps of Engineers' Section 10 permits in which EPA has provided comments or recommendations concerning wetlands preservation or have recommended denial of the permit:

TOTAL NUMBER EVALUATED AND COMMENTED ON BY EPA		TOTAL NUMBER RECOMMENDED PERMIT ISSUANCE BE DENIED OR WITHHELD
15	1971	5
39	1972	8
11	1973	1

We have also enclosed examples of the correspondence to the Corps concerning these permits and a copy of a statement read into the record of a recent rule-making hearing of the Florida Department of Pollution Control. (See Attachments 1(a) - 2 and 1(a) - 3.)

ADDENDUM

C O R R E C T I O N S

1. On page 91, lines 8-9 should read as follows: ... Discharge Elimination System Program. (See 402 of the Federal Water Pollution Control Acts Amendments.) ...

2. On page 92, line 5 should read as follows: In addition, the Federal Water Pollution Control Act Amendments also provide, etc...

QUESTION NUMBER 16

Region IV is currently involved with EPA Headquarters in promulgating the regulations called for under Section 312(b) and 312(f)(3-4). The U. S. Coast Guard is also involved in the development of regulations to support Section 312(b). These sets of regulations will define "standards of performance for marine sanitation devices"; criteria "governing the design, construction and operation of such devices" and procedures by which a "State may apply to EPA for specific no discharge zones".

Until all of these regulations are finalized, EPA and the States have avoided costly detailed studies of specific areas. Accordingly, EPA is not processing State requests for no discharge zones.

The States are free in the interim to enact their own no discharge regulations which will remain in effect until preempted by the Federal regulation. Many States, such as Michigan, have done this.

On September 1, 1972, the Executive Director, State of Florida, Department of Pollution Control requested EPA designation of no discharge zones in all waters in States carrying Class II classifications (shellfish harvesting) and all waters carrying any Classification 1-5 which are around marinas, boat yards, and mooring areas.

In Florida, recent EPA and State biological surveys have been made along the east coast and upper panhandle areas which will be utilized to examine the impact of vessel sewage on marine waters

Approximately one year ago Region IV conducted a brief study for EPA Headquarters in an effort to determine the actual "local impact" of human wastes from treatment devices supposedly then in use. The study was largely inconclusive because of the mass dilution available, the strength (BOD) of the waste, and the masking effect of super chlorination.

QUESTION NUMBER 2

Information requested is indicated in Tables A and B.

Table B information has been provided by computer printout and is displayed in a manner similar to the requested format. Some deviation is necessitated due to the limitations of the computer, i.e., Column 1 information has been displayed in Column 1 & 2 of printout. The Region could not distinguish between publicly owned or managed waste treatment plants and domestic treatment plants. We have supplied the domestic source inventory.

No information is available for Column 5 on Table B because there is presently no FY 74 priority list. This is because the State's cutoff date for receiving FY 74 applications was May 15, 1973. The State, with EPA assistance, is presently developing a revised priority system which will conform to the 1972 Amendments to the Federal Water Pollution Control Act. A public hearing which is scheduled for June 19, 1973 to be held on the State Program Plan and priortiy list.

Information is not available in EPA files for Column 10 and 11 because States were not required to report this data to EPA prior to the 1972 Amendments to the Federal Water Pollution Control Act.

The agency does not believe that reliable information for all of these facilities would be available for the entire time period. Section 124.64 of 40CFR124 will require that all States report such data to EPA

TABLE A - DATA ON OUTFALLS WH CURRENTLY DISCHARGE EFFLUENT INTO THE OCEAN OR THE GULF FROM FLORIDA SOURCES

(1)	(2)	(3)	(4)	(5)	
Location of each discharge Point	Name of Discharger	Volume of effluent (gallons per day) discharged	Nature of effluent (sewage industrial, or combination)	(a) Type of treatment provided before the effluent is discharged	(b) Does it meet Federal Standards
Miami (Vir.Key)	City of Miami	56 MGD	Combined	High Rate At. Sl.	No
Miami Beach	City of Miami Beach	22 MGD	Sewage	None	No
Hollywood	City of Hollywood	18.3 MGD	Combined	Primary	No
Pompano Beach	City of Pompano Beach	5 MGD	Combined	Communition	No
Boca Raton	City of Boca Raton	3.3 MGD	Combined	Secondary	Yes
Lake Worth	City of Lake Worth	4 MGD	Combined	Communition	No
Palm Beach	Town of Palm Beach	5 MGD	Sewage	Communition	No
Delray Beach	City of Delray Beach	2.25MGD	Combined	Communition	No
North Miami	City of North Miami	25 MGD	Combined	Communition&Skimming	No
Fernandina Bch.	ITT Rayonier	1.5 MGD	Industrial- Spent Sulfite Cooking Liquor	None	No
Crystal River Inglis, Fla. Gulf of Mexico	Florida Power Corp.	864 MGD	Cooling Water	None	No
Key West	City of Key West	5 MGD	Sewage	None	No

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TABLE A - DATA ON OUTFALLS WHICH CURRENTLY DISCHARGE EFFLUENT INTO THE OCEAN OR THE GULF FROM FLORIDA SOURCES

(1)	(6)		(7)		(8)
Location of each discharge point	(a) Percentage of BOD removed before discharge	(b) Does it meet Federal Standards?	Is the discharge currently being Monitored by: (a) State	(b) EPA	What studies have been conducted concerning the effluent of each discharge?
Miami	60	No	No regular monitoring. Some limited data has been taken over short time spans.	No regular monitoring only what monitoring that was done in the EPA studies in column 8. In the EIS "Ocean Outfalls and Other Means of Disposal" EPA stated that it would require outfall monitoring.	1/ 5/
Miami Beach	None	No			1/ 5/
Hollywood	37	No			1/ 2/ 5/ 6/
Pompano Beach	None	No			1/ 3/ 4/ 5/
Boca Raton	95	Yes			1/ 3/ 4/ 5/
Lake Worth	None	No			1/ 5/
Palm Beach	None	No			1/ 5/
Delray Beach	None	No			1/ 3/ 4/ 5/
North Miami	Neligible	No			1/ 5/
Fernandina Bch.	Zero (the mill has other discharges into Amelia River)	None	No	No	
Crystal River Inglis, Fla.	N/A	N/A	No	No	Crystal River Unit 3 Environmental Statement 3/ 4/
Key West	None	No	No	No	

1/ EPA, Region IV, "Ocean Outfall Reconnaissance Study," 1972.

2/ Lackey, James B., "Non-Bacteriological Conditions Near the Hollywood, Florida, Sewage Outfall, 1968-1971," Report to Environmental Engineering, Inc.

3/ Florida Ocean Sciences Institute, Inc., "Demonstration of the Limitations and Effects of Waste Disposal on an Ocean Shelf," Report #AR69-2, 115 Roger, FWPCA (EPA) Grant WPD 165-01 (R-1) 67, March 1969.

4/ Florida Ocean Sciences Institute, Inc., "Limitations and Effects of Waste Disposal on Ocean Shelf," EPA, Water Pollution Control Research Series, 16070 EFG, December 1971.

5/ EPA, Region IV, Environmental Impact Statement: Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida, March 1973.

6/ EPA, Region IV, Project No. 11010 FAC, "Aerobic Digestion of Sewage Sludge with Effluent Disposal by an Ocean Outfall," (final report to be published in near future).

TABLE B

Domestic Waste Source Codes
As of May 18, 1973 - Data Collected
Over Past Calendar Year (1972)

Column (1) Blank indicates a facility without specific name.
Column (2) Agency is normally same as community in Column (1)
Column (3) Grant Number = Yes
Column (3) - = None
Column (4) X = Unknown
Column (4) Number = Year
Column (5) Blank = No
Column (5) Yes = 73 Application
Column (7)

First Number	Second Number
1 - No treatment process	1 = Activated sludge
2 - Minor treatment process	2 = Extended air
3 - Primary treatment process	3 = High rate trickling filter
4 - Intermediate treatment process	4 = Standard rate trickling filter
5 - Secondary treatment process	5 = Sand filter-intermediate
6 - Tertiary treatment process	6 = Not used
	7 = Oxidation pond
	8 = Filter roughing
	9 = Unknown
	0 = None

Column (7)
Exceptions: 32 = Imhoff tank; 33 = Primary mechanical cleaned; 31 = Primary septic tank
P = Package Plant

Column (8) = Hundred Thousand Gallon Flow
0000000 Decimal Point for MGD

Column (9) = Hundred Thousand Gallon Flow
0000000 Decimal Point for MGD

In those cases where Table "A" and Table "B" data are not compatable, the greater of the two flows is considered accurate.

Column (12) = Thousand population
0000000 Comma for thousand population

Data is out of sequence due to program precedures.

Column (10) = Data not available in EPA records.

Column (11) = Data not available in EPA records.

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	SEG OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
NORTHWOOD SD	ALACHUA COUNTY		-	X		POSSOM BRANCH-HOGTOWN	CREEK
WEATHERSFIELD SD	ALTAMONTE SPRINGS		-	X		LITTLE WEKIVA RIVER	TO ST JOHNS RIV
SPRING VALLEY FARMS	ALTAMONTE SPRINGS		-	X		LITTLE WEKIVA RIVER	
	ALTAMONTE SPRINGS		01401W	1971	Yes	GROUND	
	APALACHICOLA		00267W	1961		SIPIO CREEK TO	APALACHICOLA BA
GULF COLONY SD	APALACHICOLA		-	X		SCIPIO CREEK TO	APALACHICOLA BA
	APOPKA		-	X		WEKIVA CR TO WEKIVA R	TO ST JOHNS RIV
	ARCADIA		00295W	1960		PEACE RIVER	
	ATLANTIC BEACH		00156W	1959		PABLO CR TO INLAND	WATERWAY TO ST
	AUBURNDALE		00817W	1962		LAKE LENA RUN TO LAKE	HANCOCK TO PEAC
	AVON PARK		01681W	1967		LAKE GLENADA TO ARBUCKLE	CR TO KISSIMMEE
	BALDWIN		01891W	1972		TRIB TO ST MARY'S RIVER	
	BARTOW		-	X		PEACE CREEK TO	PEACE RIVER
	BELLEAIR		00725W	1961		CLEARWATER BAY	
	BELLE GLADE		00106W	1959		HILLSBOROUGH CANAL-WEST	PALM BEACH CANA
	BELLEVIEW		00061W	1963		SWAMP	
CEDAR HILLS SD	BELLEVIEW		-	X		POND-OVERFLOW TO	SWAMP
	BLOUNTSTOWN		01167W	1965		APALACHICOLA RIVER	
	BOCA GRANDE		-	X		CHARLOTTE HARBOR	
	BOCA RATON		00571W	1968		EL RIO CANAL TO	HILLSBOROUGH CA
UNIVERSITY PARK SD	BOCA RATON		-	X		CANAL E-13	
	BUSHNELL		-	X		EVAP-PERCOLATION POND	
	BUNNFAY		00617W	1962		HOLMES CREEK TO	CHOCTAWHATCHEE
	BRADLING GREEN		02007W	1971		TRIB TO PEACE RIVER	
	BOYNTON BEACH		01015W	19A		INTRACOASTAL WATERWAY	
SAN CASTLE S/D	BOYNTON BEACH		-	X		DRAINAGE DITCH	
GATEWAY ESTATES SD	BRADEN RIVER CITY		-	X		GAP CREEK TO JEFFS CR TO	BRADEN RIVER
	BRADENTON		02577W	1971		MANATEE RIVER	
BAY SHORE GARDENS	BRADENTON		-	X		SARASOTA BAY	
WEST SIDE UTILITY PL	BRADENTON		-	X		CEDAR HAMMOCK TO	PALMA SOLA BAY
CORTEZ ESTATES SD	BRADENTON		-	X		COUNTY DRAINAGE TO	PALMA SOLA BAY
FAIRLANE ACRES SD	BRADENTON		-	X		DITCH TO WARES CREEK	TO SARASOTA BAY
TIDEVUE ESTATES	BRADENTON		-	X		CANAL TO MANATEE RIVER	
TRAILER ESTATES SD	BRADENTON		-	X		SARASOTA BAY	
WASHINGTON GUNS SD	BRADENTON		-	X		LAKE TO CANAL TO	MANATEE RIVER
FLAMINGO CAY SD	BRADENTON		-	X		CANAL TO	PALMA SOLA BAY
SOUTH BEACHES	BREVARD COUNTY		02347W	1972		INDIAN RIVER	
	BREWSTER			X		SOUTH PRONG OF	ALAFIA RIVER
	BROOKSVILLE		00501W	1959		GROUND	
SPRING HILL SD	BROOKSVILLE		-	X		SWAMP	
COLLIER ESTATES SD	BROWARD COUNTY		-	X		CYPRESS CREEK TO	INTRACOASTAL WA
COOPER COLONY EST S	BROWARD COUNTY		-	X		SOUTH NEW RIVER CANAL	
LAUDERDALE LAKES SD	BROWARD CO UT SYS S		-	X		CANAL C-13	MIDDLE RIVER CA
SUNRISE GOLF VILLAGE	BROWARD COUNTY		03413W	X		DRAINAGE CANAL TO	INTRACOASTAL WW
	BUNNELL		02497W	1972		BLACK CREEK	
	CALLAHAN		00201W	1959		ALLIGATOR CREEK	
CITY	CAPE CANAVERAL		01257W	1966		BANANA RIVER TO ATLANTIC	OCEAN
PLANT #1	CAPE CORAL SD		-	X		DILDO CANAL TO	CALOOSAHATCHEE
PLANT #2	CAPE CORAL SD		-	X		SAN CARLOS CANAL TO	CALOOSAHATCHEE
	CAPTIVA ISLAND		-	X		EVAP-PERCOLATION POND	
	CAROL CITY		-	1959		CAROL CITY CANAL TO	SNAKE CREEK CAN

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	ST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
NORTHWOOD SD	ALACHUA COUNTY	52	0000060	0000035	00000350				
HEATHERSFIELD SD	ALTAMONTE SPRINGS	53	0000350	0000242	00000420				
SPRING VALLEY FARMS	ALTAMONTE SPRINGS	59	0000100	0000034	00000200				
	ALTAMONTE SPRINGS	5	0001200	0001200	00002000				
	APALACHICOLA	53	0000400	0000554	00002400				
GULF COLONY SD	APALACHICOLA	57	0000041	X	00000800				
	APOPKA	53	0000360	0000430	00000000				
	ARCADIA	53	0001000	0000489	00007000				
	ATLANTIC BEACH	5	0001000	X	00002400				
	AUBURNDALE	53	0000500	0000347	00004500				
	AVON PARK	51	X	0000100	00001200				
	BALDWIN	5	0000200	X	00001200				
	BARTOW	54	0002750	0001100	00015000				
	BELLEAIR	51	0000500	0000230	00003300				
	BELLE GLADE	51	0001000	0000440	00006000				
	BELLEVIEW	59	0000200	0000060	00000480				
CEDAR HILLS SD	BELLEVIEW	52	0000030	X	00000100				
	BLOUNTSTOWN	51	0000240	0000112	00002375				
	BOCA GRANDE	31	X	X	X				
	BOCA RATON	53	0002000	0002430	00018000				
UNIVERSITY PARK SD	BOCA RATON	53	0000175	0000105	00000500				
	BOKEELIA	10	-	X	X				
	BONIFAY	58	0000400	0000160	00001300				
	BOWLING GREEN	5	0000200	X	X				
	BOYNTON BEACH	53	0003200	0002101	00004500				
SAN CASTLE S/D	BOYNTON BEACH	53	0000210	0000140	00000400				
GATEWAY ESTATES SD	BRADEN RIVER CITY	53	0000045	0000036	00000250				
	BRADENTON	53	0000100	0000150	00001000				
BAY SHORE GARDENS	BRADENTON	53	0000700	0000430	00002440				
WEST SIDE UTILITY PL	BRADENTON	3	0000088	0000177	00001000				
CORTEZ ESTATES SD	BRADENTON	53	0000091	0000221	00002000				
FAIRLANE ACRES SD	BRADENTON	52	0000035	X	00000100				
TIDEVUE ESTATES	BRADENTON	53	0000107	0000010	00000100				
TRAILER ESTATES SD	BRADENTON	53	0000038	0000433	00002360				
WASHINGTON GDNS SD	BRADENTON	55	0000015	X	00000100				
FLAMINGO CAY SD	BRADENTON	52	0000043	0000020	00000400				
SOUTH BEACHES	BREVARD COUNTY	5	0002000	X	X				
	BREWSTER	33	0000200	0000095	00000705				
	BROOKSVILLE	51	0000750	0000300	00003000				
SPRING HILL SD	BROOKSVILLE	57	0000070	X	00000000				
CULLIER ESTATES SD	BROWARD COUNTY	53	0001000	0000500	00000000				
COOPER COLONY EST S	BROWARD COUNTY	51	0000422	0000150	00000150				
LAUDERDALE LAKES SD	BROWARD CO UT SYS S	51	0001245	0001040	00003500				
SUNRISE GOLF VILLAGE	BROWARD COUNTY	5	X	X	X				
	BUSHELL	5	0000450	X	X				
	CALLAHAN	32	0000175	0000040	00000000				
CITY	CAPE CANAVERAL	59	0000450	0000430	00000500				
PLANT #1	CAPE CORAL SD	59	0000440	0000070	00000435				
PLANT #2	CAPE CORAL SD	53	0000075	0000036	00000190				
	CAPTIVA ISLAND	10	-	X	X				
	CAROL CITY	51	0003500	0002030	00017000				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	BEG. OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
	CARRABELLE		-	X		SAINT GEORGE SOUND	
LAGUNA ESTATES	CARRABELLE		-	X		SAINT GEORGE SOUND	
GULF TERRACES SD	CARRABELLE		-	X		ST GEORGE SOUND	
	CARYVILLE		-	X		X	
	CASSELBERRY		-	1969		GEE CK TO LAKE JESSUP	TO ST JOHNS RIV
	CEDAR KEY		03505W	X		DAUGHTRY BAYOU	
	CENTURY		-	X		HORSE CREEK TO	ESCAMBIA RIVER
	CHATTAHOOCHEE		02471W	1956		MOSQUITO CREEK TO	APALACHICOLA RI
	CHIEFLAND		02907W	1972		GROUND	
	CHIPLEY		01911W	X		ALLIGATOR CK TO HOLMES	CK TO CHOCTAWHA
LAND DEVELOPMENT CO	CHOCTAW		-	X		HORSESHOE LAKE TO	SAINT JOHNS RIV
PL 1-EAST-MARSHAL ST	CLEARWATER		00907W	X		STEVENSONS CREEK TO	SAINT JOSEPHS S
EAST PLANT	CLEARWATER		01907W	X		TAMPA BAY	
GREENHRIAR SD	CLEARWATER		-	X		JEPHY LAKE	
MCKAY CREEK SD	CLEARWATER		00847W	1966		CLEARWATER BAY	
NAMINA PLANT	CLEARWATER		02877W	X		GULF OF MEXICO	
	CLERMONT		02227W	1972		GROUND	
	CLEWISTON		00941W	1964		CANAL TO	LAKE OKEECHOBEE
	COCOA		00501W	1950		INDIAN RIVER	
HAMPTON HOMES	COCOA		-	X		SYKES CREEK TO	BANANA RIVER
POINSETT GARDENS	COCOA		-	X		POND TO CANAL TO	LAKE POINSETT
N PORT ST JOHN	COCOA		-	X		DRAINAGE DITCH TO	INDIAN RIVER
SHAKESPEARE PARK SD	COCOA		-	X		DITCH TO ST JOHNS RIVER	
	COCOA BEACH		00031W	1959		BANANA RIVER	
COLONY PARK SD	COCOA BEACH		-	X		SAMS CK TO INDIAN RIVER	TO ATLANTIC OCE
GREEN ACRES EST SD	COCOA BEACH		-	X		CANAL TO LAKE POINSETT	TO SAINT JOHNS
MERRITT RIDGE SD	COCOA BEACH		-	X		NEWFOUND HARBOUR	
PELICAN CREEK SD	COCOA BEACH		-	X		BANANA RIVER	
S PATRICK SHORES	COCOA BEACH		-	X		BANANA RIVER	
SUNRISE ESTATES SD	COCOA BEACH		-	X		BANANA RIVER TO	ATLANTIC OCEAN
THE MOORINGS SD	COCOA BEACH		-	X		BANANA RIVER	
BERMUDA RANCH GRANT	COLLIER COUNTY		-	X		POND TO FANNA UNION CA	TO GULF OF MEXI
	COPPER CITY		-	X		SOUTH NEW RIVER CANAL	
SNAPPER CREEK PARK	CORAL GABLES		-	X		SNAPPER CREEK CANAL TO	BISCAYNE BAY
HILTMORE HOTEL	CORAL GABLES		-	X		CORAL GABLES CANAL	
SAN REMO SHORES SD	CORTEZ		-	X		CANAL TO PALMA SOLA BAY	
	CUTTONDALE		01171W	1966		CARNEY POND	
	CRESCENT CITY		02907W	1968		CRESCENT LAKE	TO ST JOHNS RIV
	CRESTVIEW		01557W	1950		THAMMEL CK TO	SHOAL RIVER
	CROSS CITY		01611W	1968		DRAINAGE CANAL TO	GULF OF MEXICO
	CRYSTAL RIVER		01287W	1968		MILLERS CREEK	TO CRYSTAL RIVE
VILLAGE OF RICARDY	CRYSTAL RIVER		-	X		BASS BROOK	TO CRYSTAL RIVE
INDIAN WATERS SD	CRYSTAL RIVER		-	X		POND TO INDIAN R TO	CANAL TO CRYSTA
CUTLER RIDGE STD	CUTLER RIDGE		-	1952		BEL AIRE CANAL TO BLACK	CREEK
	DADE CITY		-	X		CANAL TO	WITHLACUOCHEE R
RIVERDALE ESTATES	DADE COUNTY		-	1969		SNAKE CREEK CANAL TO	BISCAYNE BAY
BLUE LAKES TRAILER P	DADE COUNTY		-	1960		TAMIAMI CANAL C-4	
SOUTHERN ESTATES SD	DADE COUNTY		-	1967		SNAPPER CREEK TO	BISCAYNE BAY
SEABOARD AIRLINES ID	DADE COUNTY		-	X		LITTLE RIVER CANAL	
MIDWAY MALL	DADE COUNTY		-	19X		NORTH LINE CANAL	
AIR TRAFFIC CONTROL	DADE COUNTY		-	1963		58 ST CANAL	
DADE CHRISTIAN SCH.	DADE COUNTY		-	1970		205 ST CANAL	

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
	CANNANELLE	32	0000200	0000040	00000400				
LANARK ESTATES	CANNANELLE	55	0000250	A	00000740				
GULF TERRACES SD	CANNANELLE	32	0000070	A	00000700				
	CANYVILLE	10	-	A	A				
	CASSELBERRY	57	0000600	0000500	00006000				
	CEDAR KEY	31	0000050	0000040	00000400				
	CENTURY	10	-	0000130	00001300				
	CHATTAHOOCHEE	59	0000500	0000173	00002500				
	CHIEFLAND	5	0000300	A	A				
	CHIPLEY	53	0000500	A	00002500				
LAND DEVELOPMENT CO	CHULUOTA	53	0000350	0000090	00000850				
PL 1-EAST-MARSHAL ST	CLEARWATER	51	0004000	0001300	00038500				
EAST PLANT	CLEARWATER	51	0002000	A	00010000				
GREENBRIAR SD	CLEARWATER	53	0000200	A	00000200				
MCKAY CREEK SD	CLEARWATER	51	0001500	0001320	00014000				
MARINA PLANT	CLEARWATER	51	0001500	A	A				
	CLERMONT	5	0000600	A	A				
	CLEWISTON	59	0000250	0000050	00001050				
	COCOA	53	0002000	0001100	00020040				
HAMPTON HOMES	COCOA	53	0000400	0000350	00003500				
POINSETT GARDENS	COCOA	57	0000200	A	00000350				
N PORT ST JOHN	COCOA	57	0000070	0000014	00000240				
SHAKESPEARE PARK SD	COCOA	53	0000049	0000010	00000105				
	COCOA BEACH	6	0001000	0000400	00015000				
COLONY PARK SD	COCOA BEACH	52	0000015	A	00000100				
GREEN ACRES EST SD	COCOA BEACH	53	0000080	0000100	00001000				
HERRITT RIDGE SD	COCOA BEACH	53	0000188	0000360	00001750				
PELICAN CREEK SD	COCOA BEACH	52	0000053	0000050	00000595				
S PATRICK SHORES	COCOA BEACH	53	0001000	0000700	00010000				
SURFSIDE ESTATES SD	COCOA BEACH	59	0001000	0000150	00001600				
THE MOORINGS SD	COCOA BEACH	59	0000400	A	00001000				
BERMUDA RANCH GRANT	COLLIER COUNTY	57	0000035	A	00000100				
	COOPER CITY	51	0000500	0000350	00001500				
SNAPPER CREEK PARK	CORAL GABLES	51	0003000	0002500	00025000				
BILTMORE HOTEL	CORAL GABLES	58	0000300	0000101	00000100				
SAN REMO SHORES SD	CORTEZ	52	0000053	0000042	00000400				
	CUTTONDALE	53	0000200	A	00000600				
	CRESCENT CITY	51	0000250	0000120	00001220				
	CRESTVIEW	53	0001500	0000400	00005775				
	CROSS CITY	59	0000150	0000015	00000750				
	CRYSTAL RIVER	6	0000250	0000185	00001500				
VILLAGE OF PICARDY	CRYSTAL RIVER	55	0000206	A	00001425				
INDIAN WATERS SD	CRYSTAL RIVER	52	0000030	0000030	00000300				
CUTLER RIDGE STP	CUTLER RIDGE	51	0004000	0002195	00020000				
	DADE CITY	53	0000600	0000250	00004400				
RIVERDALE ESTATES	DADE COUNTY	51	0000675	0000362	00003500				
BLUE LAKES TRAILER P	DADE COUNTY	51P	0000034	A	00000600				
SOUTHERN ESTATES SD	DADE COUNTY	53	0001050	0001428	00002500				
SEABOARD AIRLINES IO	DADE COUNTY	51	0000174	0000117	A				
MIDWAY MALL	DADE COUNTY	60P	0000120	0000060	00000060				
AIR TRAFFIC CONTROL	DADE COUNTY	59P	0000009	0000003	00000400				
DADE CHRISTIAN SCH.	DADE COUNTY	60P	0000070	0000015	00002000				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	DF I. & C. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
COAST GUARD STATION	DADE COUNTY		-	1963		GOVERNMENT CUT	
MONSIGNOR PACE HS	DADE COUNTY		-	1963		BISCAYNE CANAL C-6	
COUNTRY CLUB GAR APT	DADE COUNTY		-	1970		PRIVATE LAKE	
AMERICAN HOSP SUPPLY	DADE COUNTY		-	1970	Yes	NW 25 ST CANAL	
CORAL COUNTRY CLUB	DADE COUNTY		-	1965		LAKE TO DRESSIES DAIRY	CANAL
WESTCHESTER HOSPITAL	DADE COUNTY		-	1965		CORAL GABLES CANAL	
JADE GARDEN APTS.	DADE COUNTY		-	1963		SNAPPER CREEK	
HOWARD JOHNSONS-	DADE COUNTY		-	X		TAMIAMI CANAL	
ATOMIC SEWERAGE	DADE COUNTY		-	1956		FEC CANAL	
GOULDS PERRINE AREA	DADE COUNTY		02807W	1972		BLACK CREEK CANAL	
WESTWOOD LAKES SD	DADE COUNTY		-	X		SNAPPER CREEK CANAL TO	TAMIAMI CN-BISC
KENDALE LAKES	DADE COUNTY		-	1970		DEEP WELL	
PALM SPRINGS N SD	DADE CO		-	X		77 AVE CANAL	
	DANIA		00567W	X		DANIA CANAL TO	INTRACOASTAL WA
PLAYLAND ISLES SUBD	DANIA			1966		DRAINAGE DITCH TO	DANIA CANAL
	DAYTONA BEACH		00547W	X		HALIFAX RIVER	
HIGH RIDGE EST SD	DAYTONA BEACH		-	X		TIDAL DRAINAGE CANAL TO	INTRACOASTAL WA
HOLLY HILL SD	DAYTONA BEACH		-	1960		DRAINAGE DITCH TO	TOMOKA RIVER
WESTWOOD SD	DAYTONA BEACH		-	X		POND TO DITCH THIB TO	TOMOKA RIVER
	DEERFIELD BEACH		03461W	1962		HILLSBOROUGH CANAL	
	DE FUNIAK SPRINGS		-	X		TO SANDY CK	
	DE LAND		00931W	1944		ST JOHNS RIVER	
	DELRAY BEACH		-	X		ATLANTIC OCEAN	
DELRAY SHORES S/D	DELRAY BEACH		-	X		L IDA CANAL TO BOYNTON	CANAL TO LAKE W
	DELTONA LAKES SD		-	X		POND TO LAKE MONROE	
	DUNDEIN		01291W	1960		SAINT JOSEPHS SOUND	
	DUNNELLON		00837W	1966		BLUE RUN TO	WITHLACOOCHEE R
	EAST PALATKA		-	X		SAINT JOHNS RIVER	
DAVID B LEE PLANT	EAU GALLIE		00307W	1958		ELBO CREEK TO INDIAN	RIVER
SHERWOOD PLANT	EAU GALLIE		-	X		CREEK TO INDIAN RIVER	TO ATLANTIC OCE
SOUTH PATRICK SHORES	EAU GALLIE		-	X		BANANA RIVER	
POINT MALABAR SD	EAU GALLIE		-	X		INDIAN RIVER	
PELICAN BEACH SD	EAU GALLIE		-	X		SEBASTIAN RIVER	
WEST	EAU GALLIE			19-		X	
	EDGEWATER		01157W	1965		INDIAN RIVER	
	ELLENTON		-	X		MANATEE RIVER	
	EUSTIS		-	1953		TROUT LAKE TO LK EUSTIS	TO OKLAWAHA RIV
	EVERGLADES		02421W	1972		BARONS RIVERS	TO CHOKOLOSKEE
	FERNANDINA BEACH		02721W	X		AMELIA RIVER TO	ATLANTIC OCEAN
PLANT A	FT LAUDERDALE		02191W	1927		NORTH FORK OF	NEW RIVER
AREA B CORAL RIDGE	FT LAUDERDALE		00901W	X		RIO CATHERINE TO	INTERCOASTAL WA
AREA D SE 17TH ST	FT LAUDERDALE		00266W	1956	Yes	INTRACOASTAL WATERWAY	
PLANT C RIVERLAND RD	FT LAUDERDALE		03701W	X		NEW RIVER	TO INTRACOASTAL
PLANT E AIRPORT	FT LAUDERDALE		-	X		CANAL C-13 TO	ATLANTIC OCEAN
ROGERS ESTATES	FT LAUDERDALE		-	X		PLANTATION CANAL TO	NEW RIVER
LYONS PARK SUBDIV	FT LAUDERDALE		-	X		CYPRESS CREEK TO	INTRACOASTAL WA
PLAYLAND VILLAGE SD	FT LAUDERDALE		-	X		DRAINAGE DITCH TO	SOUTH NEW RIVER
	FT MEADE		01861W	1968		PEACE RIVER	
SOUTHEAST PLANT	FT MYERS		02457W	1971		CALOOSAHATCHEE RIVER	
FLAMINGO BAY SUBDIV	FT MYERS		-	X		PINE ISLAND SOUND TO	GULF OF MEXICO
RALEIGH AVE PLANT	FT MYERS		01021W	1955		CALOUSAHATCHEE RIVER	
TRAILWINDS SD	FT MYERS		-	X		DRAINAGE CANAL TO	CALOOSAHATCHEE

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
COAST GUARD STATION	DADE COUNTY	5WP	0000010	0000014	00000200				
MONSIGNOR PACE HS	DADE COUNTY	5W	0000030	0000035	00000750				
COUNTRY CLUB GAR APT	DADE COUNTY	5WP	0000140	0000020	00000200				
AMERICAN HOSP SUPPLY	DADE COUNTY	5WP	0000100	0000030	00000150				
DORAL COUNTRY CLUB	DADE COUNTY	5WP	0000170	0000215	00001500				
WESTCHESTER HOSPITAL	DADE COUNTY	5WP	0000030	0000015	00000150				
JADE GARDEN APTS.	DADE COUNTY	51P	0000345	A	00000200				
HOWARD JOHNSONS-	DADE COUNTY	5W	0000025	X	X				
ATOMIC SEWERAGE	DADE COUNTY	51	0000072	0000024	X				
GOULDS PERMINE AREA	DADE COUNTY	6	0002000	0001000	00010000				
WESTWOOD LAKES SD	DADE COUNTY	5W	0002620	0001470	00022700				
KENDALE LAKES	DADE COUNTY	5W	0000500	0000220	00000500				
PALM SPRINGS N SD	DADE CO	51	0000750	0000447	00000000				
	DANIA	5W	0000750	0000730	00007000				
PLAYLAND ISLES SUBD	DANIA	51	0000150	0000163	00003150				
	DAYTONA BEACH	5W	0010000	0012200	00060000				
HIGH RIDGE EST SD	DAYTONA BEACH	5W	0000090	A	00000400				
HOLLY HILL SD	DAYTONA BEACH	53	0000050	A	00000200				
WESTWOOD SD	DAYTONA BEACH	52	0000035	A	00000300				
	DEERFIELD BEACH	51	0001200	0000800	00006000				
	DE FUNIAK SPRINGS	53	0000480	0000420	00006525				
	DE LAND	53	0001200	0000500	00006000				
	DELRAY BEACH	10	0003500	0001600	00020000				
DELRAY SHORES S/D	DELRAY BEACH	53	0000075	0000035	00000350				
	DELTONA LAKES SD	5W	0000500	0000210	00002500				
	DUNEDIN	5	0002000	0001580	00020000				
	DUNNELLON	53	0000211	0000180	00001080				
	EAST PALATKA	33	A	A	00001000				
DAVID B LEE PLANT	EAU GALLIE	53	0001650	0002500	00022000				
SHERWOOD PLANT	EAU GALLIE	53	0000710	0000450	00004500				
SOUTH PATRICK SHORES	EAU GALLIE	53	0001000	0000400	00010000				
PORT MALABAR SD	EAU GALLIE	52	0000750	0000360	00003240				
PELICAN BEACH SD	EAU GALLIE	53	0000112	A	00000500				
WEST	EAU GALLIE	1	-	-	-				
	EDGEWATER	53	0000420	0000340	00003700				
	ELLENTON	10	-	A	00000200				
	EUSTIS	53	0000550	0000455	00007090				
	EVERGLADES	5	0000100	0000030	00000600				
	FERNANDINA BEACH	33	0000500	0000400	00004500				
PLANT A	FT LAUDERDALE	51	0004500	0003200	00044100				
AREA B CORAL RIDGE	FT LAUDERDALE	53	0004000	0005006	00046700				
AREA D SE 17TH ST	FT LAUDERDALE	53	0003400	0002750	00010000				
PLANT C RIVERLAND RD	FT LAUDERDALE	53	0000350	0000720	00006000				
PLANT E AIRPORT	FT LAUDERDALE	5W	0000500	0000040	A				
EDWARD ESTATES	FT LAUDERDALE	53	0001150	0001690	00012500				
LYONS PARK SUBDIV	FT LAUDERDALE	53	0000300	0000480	00004000				
PLAYLAND VILLAGE SD	FT LAUDERDALE	57	0000480	0000200	00001750				
	FT MEADE	X	0000530	0000260	00002000				
SOUTHWEST PLANT	FT MYERS	5W	A	A	A				
FLAMINGO BAY SUBDIV	FT MYERS	53	0000100	A	00000100				
RALEIGH AVE PLANT	FT MYERS	5	0004000	A	00030000				
TRAILWINDS SD	FT MYERS	51	0000070	A	00000100				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	BE OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
TROPIC ISLES SD	FT MYERS		-	X		CANAL TO	CALOOSAHATCHEE
YACHT CLUB COLNY SD	FT MYERS		-	X		DAUGHTREYS CREEK TO	CALOOSAHATCHEE
LEHIGH ACRES	FT MYERS		-	X		AGLE CAN TO ORANGE RIVERTO	CALOOSAHATCH
	FT PIERCE		00117W	1959		INDIAN RIVER	
	FT WALTON BEACH		0042BW	1955		SANTA ROSA SOUND	
COLONY ESTATES SD	FT WALTON BEACH		-	X		FIVE MILE BAYOU	
GARNIER BEACH SD	FT WALTON BEACH		-	X		PRIVATE LAKE	
OKALOOSA ISLAND AUTH	FT WALTON BEACH		04011W	X		SANTA ROSA SOUND	
	FROSTPROOF		-	X		LAKE REEDY	
PLANT #1	GAINESVILLE		00674W	1950		SWEETWATER BRANCH TO	PAINES PRAIRIE
COUNTRY CLUB EST SD	GAINESVILLE		-	X		PAYNES PRAIRIE	
SUNLAND TRAINING CTR	GAINESVILLE		-	X		NEWNAN'S LAKE	
UNIVERSITY OF FLA	GAINESVILLE		-	X		LAKE ALICE	
	GRACEVILLE		-	X		LITTLE CREEK TO	HOLMES CREEK
	GREEN COVE SPRINGS		02017W	X		SAINT JOHNS RIVER	
MAGNOLIA SPRINGS APT	GREEN COVE SPRINGS		-	X		SAINT JOHNS RIVER	
	GULF BREEZE		02256W	1971		SANTA ROSA SOUND	
ARCADIA VILLAGE SD	GULF BREEZE		-	X		SANTA ROSA SOUND TO	PENSACOLA BAY
VENTIAN ISLES SD	GULF BREEZE		-	X		SANTA ROSA SOUND	
WHITE CITY	GULF COUNTY		-	X		INTRACOASTAL WATERWAY	
BEACON HILL	GULF COUNTY		-	X		OUTFALL TO ST JOSEPH	SOUND
OAK GROVE	GULF COUNTY		-	X		ST JOSEPH BAY	
	HAINES CITY		00691W	1955		MARION CANAL TO LAKE	MARION
	HASTINGS		01796W	1968		DEEP CREEK	TO SAINT JOHNS
	HAVANA		-	X		CREEK TO	OCHLOCKONEE RIV
LAKE CECILE ESTATES	HIALEAH		-	X		CANALS TO	LITTLE RIVER CA
PALM SPRINGS HOSP	HIALEAH			1965		LITTLE RIVER C-7	
PALM SPRINGS GARDEN	HIALEAH GARDENS		-	1968		LITTLE RIVER	
SEBRING AIRPORT AUTH	HIGHLANDS CO		-	X		X	
	HOLLY HILL		01366W	1966		HALIFAX RIVER	
	HOLLYWOOD		01466W	X		ATLANTIC OCEAN	
	HOLMES BEACH		01746W	1968		TAMPA BAY	
	HOMESTEAD		01791W	1953		HOMESTEAD DRAINAGE CANAL	
SOUTH DADE LABOR CMP	HOMESTEAD		-	19X		FEEDER CANAL TO C-103	CANAL
AIR FORCE BASE	HOMESTEAD		-	1956		MILITARY CANAL TO	BISCAYNE BAY
CASA GRANDA APTS	HOWARD		-	1966		C-100 CANAL	
HEFTLER HOMES SD	HOWELL PARK		-	X		DRAINAGE DITCH TO	LAKE HOWELL
/S D/	INDIAN HARBOUR BEACH		-	X		MOSQUITO CONTROL DITCH	TO BANANA RIVER
	INDIAN LAKE ESTATES		-	X		LAKE WEOHYAKAPKA	
SOUTH SHORE	INDIAN ROCKS BEACH		00491W	1959		BOCA CIEGA BAY	TO GULF OF MEXI
/SD/.	INDIANTOWN PARK		-	X		DITCH TO ST LUCIE	CANAL
	INVERNESS		00041W	1963		LAKE TSALA APOPKA	
BUCKMAN STREET STP	JACKSONVILLE		00141W	1961	Yes	ST JOHNS RIVER	
S D #2	JACKSONVILLE		02987W	1968		ST JOHNS RIVER	
ARLINGTON HILLS S/D	JACKSONVILLE		-	X		STRAWBERRY CREEK TO	ARLINGTON R-ST
ARLINGWOOD S/D	JACKSONVILLE		-	1957		STRAWBERRY CREEK TO	ARLINGTON RIVER
AZALEA TERRACE SUBD	JACKSONVILLE		-	1953		BRYANTS CR TO POTTSBURG	CR TO ST JOHNS
BEACH HAVEN V-STG #1	JACKSONVILLE		-	X		DRAINAGE DITCH TO	INTERCOASTAL WA
BEACON HLS & HRBR SD	JACKSONVILLE		-	X		ST JOHNS RIVER	
BISCAYNE TERRACE SD	JACKSONVILLE		-	1962		CREEK TO RIBAULD RIVER	TO ST JOHNS RIV
BRIARWOOD SD	JACKSONVILLE		-	X		GOODSBY LAKE TO	ST JOHNS RIVER
BROOKVIEW SUBDIV	JACKSONVILLE		-	X		JONES CREEK	TO ST JOHNS RIV

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(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
TROPIC ISLES SD	FT MYERS	53	0000079	0000179	0000515				
YACHT CLUB COLNY SD	FT MYERS	53	0000087	X	0000470				
LEHIGH ACRES	FT MYERS	53	0000480	0000250	0000 3000				
	FT PIERCE	51	0000000	0000500	0000 0000				
	FT WALTON BEACH	51	0001700	0002070	0002 2188				
COLONY ESTATES SD	FT WALTON BEACH	54	0000150	X	0000 0100				
GARNIER BEACH SD	FT WALTON BEACH	53	0000143	0000060	0000 0240				
OKALOOSA ISLAND AUTH	FT WALTON BEACH	52	0000145	X	0000 0100				
	FROSTPROOF	53	0000160	0000090	0000 1000				
PLANT #1	GAINESVILLE	53	0000500	X	X				
COUNTRY CLUB EST SD	GAINESVILLE	52	0000055	0000040	0000 0200				
SUNLAND TRAINING CTR	GAINESVILLE	54	0000500	0000312	X				
UNIVERSITY OF FLA	GAINESVILLE	52	0003100	0002080	0003 0600				
	GRACEVILLE	53	0000250	0000200	0000 2000				
	GREEN COVE SPRINGS	10	-	X	0000 1500				
MAGNOLIA SPRINGS APT	GREEN COVE SPRINGS	10	-	X	X				
	GULF BREEZE	5	0000500	0000077	0000 1231				
ARCADIA VILLAGE SD	GULF BREEZE	53	0000105	X	0000 1000				
VENTIAN ISLES SD	GULF BREEZE	53	X	0000032	0000 0405				
WHITE CITY	GULF COUNTY	10	-	X	X				
BEACON HILL	GULF COUNTY	10	-	X	X				
OAK GROVE	GULF COUNTY	10	-	X	X				
	HAINES CITY	50	0001500	X	0000 4975				
	HASTINGS	52	0000100	0000090	0000 0430				
	HAVANA	53	0000300	0000450	0000 1700				
LAKE CECILE ESTATES	HIALEAH	51	0000210	0000205	0000 2000				
PALM SPRINGS HOSP	HIALEAH	51P	0000050	X	0000 0300				
PALM SPRINGS GARDEN	HIALEAH GARDENS	54	0000050	0000020	0000 0450				
SEBRING AIRPORT AUTH	HIGHLANDS CO	39	X	X	X				
	HOLLY HILL	54	0001200	0000631	0000 0000				
	HOLLYWOOD	33	0035000	0010000	X				
	HOLMES BEACH	51	0000042	0000030	0000 0300				
	HOMESTEAD	51	0001450	0001112	0001 0000				
SOUTH DADE LABOR CMP	HOMESTEAD	54	0000100	0000126	0000 1350				
AIR FORCE BASE	HOMESTEAD	54	0001150	0000117	0000 2000				
CASA GRANDA APTS	HOWARD	54P	0000020	X	0000 0300				
HEFTLER HOMES SD	HOWELL PARK	57	0000082	0000091	0000 0550				
/S D/	INDIAN HARBOUR BEACH	54	0000675	0000175	0000 1750				
	INDIAN LAKE ESTATES	54	0000200	X	0000 0300				
SOUTH SHORE	INDIAN ROCKS BEACH	51	0000450	0000170	0000 1980				
/SD/	INDIANTOWN PARK	53	0000140	0000100	0000 1200				
	INVERNESS	53	0000300	0000250	0000 2400				
HUCKMAN STREET STP	JACKSONVILLE	3	0017500	0011000	0017 5000				
S D #2	JACKSONVILLE	5	0000000	0002730	0000 0000				
ARLINGTON HILLS S/D	JACKSONVILLE	53	0000420	0000035	0000 0350				
ARLINGWOOD S/D	JACKSONVILLE	51	0000210	0000250	0000 2500				
AZALEA TERRACE SUBD	JACKSONVILLE	53	0000050	0000055	0000 0553				
BEACH HAVEN W-STG #1	JACKSONVILLE	53	0000035	0000013	0000 0130				
BEACON HLS S MBR SD	JACKSONVILLE	57	0000200	X	0000 1000				
BISCAYNE TERRACE SD	JACKSONVILLE	53	0000053	0000052	0000 0550				
BRIARWOOD SD	JACKSONVILLE	39	0000035	0000030	0000 0150				
BROOKVIEW SUBDIV	JACKSONVILLE	53	0000350	0000250	0000 1575				

NAME OF PLANT (FACILITY) (1)	LOCATION (COMMUNITY)	AGENCY (2)	GRANT (3)	REGI OPER. DATE (4)	APPLICATION PENDING (5)	RECEIVING WATERS (6)
CEDAR HILLS SUBD	JACKSONVILLE			X		DITCH TO CEDAR RIVER TO ORTEG R TO ST J
CENTER PARK SUBD	JACKSONVILLE			1954		DYALS CR TO CEDAR SWAMP CREEK TO PABLO
CHEROKEE PARK SUBD	JACKSONVILLE			X		DITCH TO LITTLE MOTTSBURG CR-ST
DU-CLAY SD	JACKSONVILLE			X		POND TO DITCH TO ORTEGA R TO ST
EDGEWOOD HEIGHTS SUB	JACKSONVILLE			1952		DR CANAL TO CEDAR CK TO ORTEGA R TO ST
ALDERMAN PARK SUBDIV	JACKSONVILLE			X		STRAWBERRY CR TO ARLINGTON R TO
FLORADALE SUB-UN 6&9	JACKSONVILLE			1958		RIBAULT RIVER TO SAINT JOHNS RIV
FLORADALE UNITS 4	JACKSONVILLE			X		RIBAULT RIVER TO ST JOHNS RIVER
FT CAROLINE CH ES SD	JACKSONVILLE			X		ST JOHNS RIVER
GREENMEIER SD	JACKSONVILLE			X		POND TO STREAM TO WILLIS BRANCH
GROVE PARK SD	JACKSONVILLE			1960		BIG MOTTSBURG CREEK
HARBOR VIEW SUBD	JACKSONVILLE			X		NORTH BRANCH TO RIBAULT RIVER TO TROUT
HERITAGE HILLS SD	JACKSONVILLE			1965		DRAINAGE DITCH TO CEDAR CREEK
HIGHLANDS SUBDIV	JACKSONVILLE			X		LAGOON TO TROUT RIVER
ALHERMAPLE PARK SUBD	JACKSONVILLE			1960		DRAINAGE DITCH TO ORTEGA R TO ST
HOLIDAY HARB SUBDN 1	JACKSONVILLE			X		POND TO HOGPEN CREEK
HOLIDAY HILLS SUBD	JACKSONVILLE			1955		SILVERSMITH CR-N MOTTS- HUMS CK TO ST J
HOLLY OAKS FOREST SD	JACKSONVILLE			X		CREEK TO MILL COVE TO ST JOHNS RIV
HYDE GROVE ACRES SD	JACKSONVILLE			X		LACKAWANNA RUN TO CEDAR RIVER
ISLE OF PALMS SD	JACKSONVILLE			1972		PABLO CREEK TO INTRACOASTAL WA
KILLARNEY SHORES SUB	JACKSONVILLE			1954		BIG MOTTSBURG CREEK TO ST JOHNS RIV
L + N SD-HEWLONG	JACKSONVILLE			X		POND TO DRAINAGE DITCH TO CLEAR RIVER
LAKE LUCINA SD	JACKSONVILLE			X		NEW CASTLE CREEK TO SAINT JOHNS RIV
LAKE SHORE TERRACE	JACKSONVILLE			1950		CEDAR CREEK TO ORTEGA R TO ST
LAKEWOOD SUBD	JACKSONVILLE			1950		SAINT JOHNS RIVER
LAKESIDE ESTATES SD	JACKSONVILLE			X		LUCY BRANCH CREEK TO DOCTORS LAKE
LINCOLN ESTATES	JACKSONVILLE			1962		RIBAULT RIVER TO TROUT RTO ST JOHNS RIV
LORETTA SPRINGS SD	JACKSONVILLE			1967		JULINGTON CREEK TO ST JOHNS RIVER
MAGNOLIA GARDENS SUB	JACKSONVILLE			X		DITCH TO RIBAULT RIVER TO TROUT RIVER
MANDARIN TERRACE SD	JACKSONVILLE			X		BRANCH TO CORMORANT BR TO JULINGTON CR
MARSHALL ACRES SD	JACKSONVILLE			X		MCGIRTS CREEK TO ORTEGA R TO ST
MAYBROOK SD	JACKSONVILLE			X		PABLO CREEK TO ST JOHNS RIVER
MONTEREY SUBDIVISION	JACKSONVILLE			X		SAINT JOHNS RIVER
NORMANDY HILLS SD	JACKSONVILLE			X		WILLIS CREEK TO CEDAR CRTO SAINT JOHNS
NORMANDY SUBD	JACKSONVILLE			1957		CEDAR R TO ORTEGA RIVER TO ST JOHNS RIV
NORMANDY VILLAGE	JACKSONVILLE			X		SOUTH BRANCH TO CEDAR CREEK
OAK HARBOR SD	JACKSONVILLE			X		TIDAL CREEK (PABLO CREEK)
OAK HILL PRK SD	JACKSONVILLE			X		CANAL TO MCGIRTS CREEK
OAK HILL SUBD	JACKSONVILLE			X		CEDAR CREEK TO ORTEGA RIVER
OCEANWAY MANOR SD	JACKSONVILLE			1960		DRAINAGE DITCH TO DUNNS CREEK
ORTEGA FOREST SUBD	JACKSONVILLE			X		ORTEGA CREEK TO ST JOHNS RIV
ORTEGA HILLS SUBD	JACKSONVILLE			X		MC GRIIS CR TO ORTEGA R TO ST JOHNS RIV
OSCEOLA FOREST SUBD	JACKSONVILLE			X		DITCH TO CREEK TO TROUT RIVER
PABLO KEYS SD	JACKSONVILLE			1972		INTRACOASTAL WATERWAY
PABLO PARK SD	JACKSONVILLE			X		INTRACOASTAL WATERWAY
PICKWICK PARK SD	JACKSONVILLE			X		DRAINAGE DITCH TO ST JOHNS RIVER
RIBAULT HEIGHTS SUBD	JACKSONVILLE			1959		SIX MILE CR TO RABAULT RIV TROUT RIVER
RIBAULT MANOR SUBD	JACKSONVILLE			1959		RIBAULT R TO TROUT RIVERTO ST JOHNS RIV
ROLLING HILLS SD	JACKSONVILLE			1965		WILLS BRANCH TO CEDAR CREEK
SANDALWOOD SD	JACKSONVILLE			1960		DRAINAGE CANAL TO PABLO CREEK
SAN JOSE SHORES SUBD	JACKSONVILLE			1965		SAINT JOHNS RIVER
SAN JOSE SUBD	JACKSONVILLE			1971		SAINT JOHNS RIVER

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	T. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
CEDAR HILLS SUBD	JACKSONVILLE	53	0001400	0000515	0000				
CENTER PARK SUBD	JACKSONVILLE	53	0000350	0000400	0000				
CHEROKEE PARK SUBD	JACKSONVILLE	53	0000700	0000275	0000				
DU-CLAY SD	JACKSONVILLE	52	0000150	A	0000				
EDGEWOOD HEIGHTS SUB	JACKSONVILLE	59	0000010	0000014	0000				
ALDERMAN PARK SUBDIV	JACKSONVILLE	53	0000175	0000042	0000				
FLORADALE SUB-UN #69	JACKSONVILLE	53	0000048	0000175	0000				
FLORADALE UNITS 3	JACKSONVILLE	53	0000048	0000051	0000				
FT CAROLINE CR ES SD	JACKSONVILLE	59	0000420	0000205	0000				
GREENBRIER SD	JACKSONVILLE	52	0000015	A	0000				
GROVE PARK SD	JACKSONVILLE	51	0000078	0000110	0000				
HARBOR VIEW SUBD	JACKSONVILLE	53	0000105	0000260	0000				
HERITAGE HILLS SD	JACKSONVILLE	59	0000054	0000021	0000				
HIGHLANDS SUBDIV	JACKSONVILLE	53	0001000	0000200	0000				
HOMEWARD PARK SUBD	JACKSONVILLE	53	0000042	0000030	0000				
HOLIDAY HARB SD-PH 1	JACKSONVILLE	52	0000043	A	0000				
HOLIDAY HILLS SUBD	JACKSONVILLE	53	0000142	0000250	0000				
HOLLY OAKS FOREST SD	JACKSONVILLE	53	0000350	A	0000				
HYDE GROVE ACRES SD	JACKSONVILLE	57	0000039	A	0000				
ISLE OF PALMS SD	JACKSONVILLE	5	A	0000005	0000				
KILLARNEY SHORES SUB	JACKSONVILLE	53	0000024	0000020	0000				
L + A SD-HEMLONG	JACKSONVILLE	52	0000035	0000035	0000				
LAKE LUCINA SD	JACKSONVILLE	53	0000420	A	0000				
LAKE SHORE TERRACE	JACKSONVILLE	53	0000090	0000110	0000				
LAKEWOOD SUBD	JACKSONVILLE	53	0000500	0000300	0000				
LAKESIDE ESTATES SD	JACKSONVILLE	52	0000080	0000030	0000				
LINCOLN ESTATES	JACKSONVILLE	52	0000400	0000400	0000				
LORETTA SPRINGS SD	JACKSONVILLE	3	0000025	0000003	0000				
MAGNOLIA GARDENS SUB	JACKSONVILLE	53	0000140	0000200	0000				
MANDARIN TERRACE SD	JACKSONVILLE	55	0000105	0000038	0000				
MARSHALL ACRES SD	JACKSONVILLE	51	0000025	A	0000				
MAYBROOK SD	JACKSONVILLE	52	0000054	A	0000				
MONTEREY SUBDIVISION	JACKSONVILLE	51	0000500	0000300	0000				
NORMANDY HILLS SD	JACKSONVILLE	53	0000070	0000105	0000				
NORMANDY SUBD	JACKSONVILLE	53	0000430	0000350	0000				
NORMANDY VILLAGE	JACKSONVILLE	33	0000315	0000200	0000				
OAK HARBOR SD	JACKSONVILLE	53	0000143	A	0000				
OAK HILL HGR SD	JACKSONVILLE	53	0000420	0000027	0000				
OAK HILL SUBD	JACKSONVILLE	53	0000140	0000144	0000				
OCEANWAY MANOR SD	JACKSONVILLE	59	0000150	0000050	0000				
ORTEGA FOREST SUBD	JACKSONVILLE	32	0000046	A	0000				
ORTEGA HILLS SUBD	JACKSONVILLE	53	0000110	0000170	0000				
OSCEOLA FOREST SUBD	JACKSONVILLE	53	0000093	0000090	0000				
PABLO KEYS SD	JACKSONVILLE	5	A	0000018	0000				
PABLO PARK SD	JACKSONVILLE	51	0000015	A	0000				
PICKWICK PARK SD	JACKSONVILLE	59	0000040	A	0000				
PINAULT HEIGHTS SUBD	JACKSONVILLE	53	0000182	0000190	0000				
PINAULT MANOR SUBD	JACKSONVILLE	53	0000350	0000350	0000				
ROLLING HILLS SD	JACKSONVILLE	59	0000210	0000190	0000				
SANDALWOOD SD	JACKSONVILLE	51	0000245	0000200	0000				
SAN JOSE SHORES SUBD	JACKSONVILLE	5	0000028	0000028	0000				
SAN JOSE SUBD	JACKSONVILLE	59	X	X	0000				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	BE OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
SAN MATEO SD	JACKSONVILLE		-	X		POND TO HELEN CREEK	TO BROWARD RIVE
SAN SOUCI SUBD	JACKSONVILLE		-	X		BIG POTTSBURG CREEK TO	SAINT JOHNS RIV
SANTA MONICA SD	JACKSONVILLE		-	1959		BENNETT CREEK TO LITTLE	POTTSBURG CREEK
SHERWOOD FOREST SD	JACKSONVILLE		-	X		CANAL TO TROUT RIVER	TO SAINT JOHNS
SOUTHWOOD SD	JACKSONVILLE		-	X		POLISHING POND TO	ST JOHNS RIVER
CONFEDERATE POINT PL	JACKSONVILLE		-	1968		DITCH TO CEDAR CK TO	ORTEGA R TO ST
TIMIQUANA ACRES SD	JACKSONVILLE		-	1964		POND TO DRAINAGE DITCH	TO ORTEGA RIVER
TIMIQUANA HEIGHTS	JACKSONVILLE		-	X		FISHING CREEK TO	ORTEGA RIVER
UNIVERSITY PARK SD	JACKSONVILLE		-	X		FAIRFILED BRANCH TO	SAINT JOHNS RIV
WASHINGTON HGTS SD	JACKSONVILLE		-	X		KIMAULT RIVER	TO TROUT RIVER
	JACKSONVILLE BEACH		02157W	X		DITCH TO PABLO CREEK	TO INTRACOASTAL
	JASPER		02027W	X		SWAMP TO ALABAMA RIVER	
	JAY		01711W	1970		CONECUH RIVER TO	ESCAMBIA RIVER
JUPITER-IN-THE-PINES	JUPITER		-	X		N FORK OF LOXAHATCHEE	RIVER
SAL HAVEN SD	JUPITER		-	X		LGN TO INTRACOASTAL CANL	TO LOXAHATCHEE
	KENSINGTON PARK		-	X		DRAINAGE CANAL TO	PHILLIPPI CREEK
	KEY COLONY BEACH		00786W	1971		BAY TO ATLANTIC OCEAN	
	KEY WEST		-	X		ATLANTIC OCEAN	
KEY HAVEN S D	KEY WEST		-	X		GULF OF MEXICO	
LINCOLN MANOR SD	KEY WEST		-	1972		BUCA CHICA CHANNEL	
	KISSIMMEE		-	X		ATLANTIC OCEAN	
KISSIMMEE HLANDS SD	KISSIMMEE		01567W	1966		WEST CANAL TO LAKE	TOHOPEKALIGA
	LA BELLE		-	X		POND TO CANAL TO	LAKE TOHOPEKALI
	LAKE ALFRED		01131W	1970		CALOOSAHATCHEE RIVER	
	LAKE BUTLER		02071W	1968		LAKE HAINES TO PEACE	RIVER
	LAKE CITY		01327W	1964		DITCH TO SILVER RUN TO	NEW RIVER
	LAKE CITY		-	X		BIG ALLIGATOR LAKE	
WOODLAND GROVE SD	LAKELAND		-	X		POLISHING POND TO	ALLIGATOR LAKE
SEWAGE TREATMENT PLT	LAKE PARK		00165W	1926		ONE MILE C TO BANANA L	TO L MANCOCK TO
PALM BEACH GARDENS	LAKE PARK		-	X		DRAINAGE CANAL TO C-17	
PALM BCH CABANA COLY	LAKE WALES		-	X		INTRACOASTAL WATERWAY	
	LAKE WALES		-	X		LAKE EFFIE TO PEACE	CREEK TO PEACE
EAST LAKE WALES SD	LAKE WALES		-	X		PUMP TO L WEOHYAKAPKA	TO LAKE KISSIMM
RIVER RANCH ACRES SD	LAKE WALES		-	X		CANAL TO KISSIMMEE LAKE	TO KISSIMMEE RI
RIVER RANCH ACRES	LAKE WORTH		-	X		CANAL TO KISSIMMEE LAKE	TO KISSIMMEE RI
	LAKE WORTH		-	X		ATLANTIC OCEAN	
LAKE WORTH HILLS SD	LANTANA		-	X		LATERAL 11 TO LAKE WORTH	DRAINAGE DISTRI
SEMINOLE MANOR ISD	LARGO		-	X		LAKE WORTH DRAIN CANAL	I-17 TO PALM BE
	LARGO		02337W	1970		CROSS BAYOU CANAL	
FLORAL GARDENS SD	LARGO		-	X		ALLENS CREEK TO	TAMPA BAY
NEW PORT SD	LARGO		-	X		COUNTY DITCH TO	TAMPA BAY
OAKHURST SERV CO	LARGO		-	X		GULF OF MEXICO	
OZONA SHORES SD	LARGO		-	X		SMITH BAYOU THIS TO	ST JOSEPH SOUND
SUN COAST ESTATES SD	LARGO		-	X		STORM WATER CREEK TO	DONEGANS CREEK
RIDGEWOOD GROVES SD	LEE COUNTY		-	X		DRAINAGE CANAL TO	LONG BAYOU
SAN PEDRO SD	LEE COUNTY		-	X		X	
SAN PABLO SD	LEE COUNTY		-	X		CALOOSAHATCHEE RIVER	
RUSSELL PARK SD	LEESBURG		-	X		CALOOSAHATCHEE RIVER	
	LEISURE CITY		01451W	1937		LK GRIFFIN TO OKLAWAHA R	TO ST JOHNS RIV
RAVENNA PARK SD	LINCOLN HEIGHTS		-	X		LEACHED INTO GROUND	
	LIVE OAK		-	X		DRAINAGE CANAL TO	ST JOHNS RIVER
			00481W	1960		DRAINAGE WELLS	

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(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
SAN MATEO SD	JACKSONVILLE	53	0000350	X	00001500				
SAN SOUCI SUBD	JACKSONVILLE	51	0000420	0000300	00002030				
SANTA MONICA SD	JACKSONVILLE	53	0000350	0000240	00002300				
SHERWOOD FOREST SD	JACKSONVILLE	33	0000210	0000180	00001790				
SOUTHWOOD SD	JACKSONVILLE	59	0000040	X	00000175				
CONFEDERATE POINT PL	JACKSONVILLE	52	0000070	0000020	00001200				
TIMIQUANA ACRES SD	JACKSONVILLE	53	0000035	0000025	00000250				
TIMIQUANA HEIGHTS	JACKSONVILLE	59	0000040	X	00000200				
UNIVERSITY PARK SD	JACKSONVILLE	33	0000117	0000110	00001000				
WASHINGTON HGTS SD	JACKSONVILLE	52	0000175	0000035	00000480				
	JACKSONVILLE BEACH	59	0000000	X	X				
	JASPER	33	0000200	0000050	00002155				
	JAY	5	0000100	X	00000470				
JUPITER-IN-THE-PINES	JUPITER	51	0000200	0000045	00000900				
SAL HAVEN	JUPITER	53	0000070	0000023	00000145				
SD	KENSINGTON PARK	53	0000398	0000307	00004200				
	KEY COLONY BEACH	5	0000200	0000010	-				
	KEY WEST	20	X	X	00040000				
	KEY WEST	33	0000300	0000275	00002500				
KEY HAVEN S D	KEY WEST	53	0000035	X	00000400				
LINCOLN MANOR SD	KEY WEST	59	0000100	X	00001000				
	KISSIMMEE	53	0001200	0001000	00007500				
KISSIMMEE HLANDS SD	KISSIMMEE	53	0000175	0000134	00000595				
	LA BELLE	59	0000060	X	00000700				
	LAKE ALFRED	52	0000300	0000270	00000684				
	LAKE BUTLER	51	0001000	0000220	00002000				
	LAKE CITY	53	0001500	0001200	00009760				
WOODLAND GROVE SD	LAKE CITY	52	0000012	X	00000100				
SEWAGE TREATMENT PLT	LAKELAND	53	0001400	0000610	00054000				
PALM BEACH GARDENS	LAKE PARK	53	0000700	0000360	00002000				
PALM BCH CABANA COLY	LAKE PARK	53	0000350	0000210	00002050				
	LAKE WALES	53	0001000	0000420	00000940				
EAST LAKE WALES SD	LAKE WALES	59	0000060	X	00002000				
RIVER RANCH ACRES SD	LAKE WALES	57	0000040	0000028	00000300				
RIVER RANCH ACRES	LAKE WALES	57	0000002	0000005	00000200				
	LAKE WORTH	20	-	X	00030000				
LAKE WORTH HILLS SD	LAKE WORTH	57	0000033	X	00000325				
SEMINOLE MANOR SD	LANTANA	53	0000217	0000054	00000550				
	LARGO	53	0000000	X	X				
FLORAL GARDENS SD	LARGO	53	0000056	0000003	00000015				
NEW PORT SD	LARGO	53	0000525	0000350	00002200				
OAKHURST SERV CO	LARGO	53	0000123	X	00001000				
OZONA SHORES SD	LARGO	52	0000105	X	00000100				
SUN COAST ESTATES SD	LARGO	57	0000035	X	00000300				
RIDGEWOOD GROVES SD	LARGO	53	0000105	0000040	00000700				
SAN PEDRO SD	LEE COUNTY	59	X	X	X				
SAN PABLO SD	LEE COUNTY	10	-	X	00000140				
RUSSELL PARK SD	LEE COUNTY	10	-	X	00001750				
	LEESBURG	59	0000700	0000200	00015000				
	LEISURE CITY	59	0000230	0000096	00003100				
RAVENNA PARK SD	LINCOLN HEIGHTS	52	0000089	0000050	00000640				
	LIVE OAK	53	0001000	0000600	00007700				

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(1)		(2)	(3)	(4)	(5)	(6)	
	LONGBOAT KEY		-	X		MOSQUITO CONTROL DITCH	TO SARASOTA BAY
SUNLAKE PARK SD	LUTZ		-	X		ROCKY CREEK TO OLD	TAMPA BAY
	LYNN HAVEN		00326W	1962		LYNN HAVEN BAYOU TO	NORTH BAY
	MACCLENNY		00661W	1950		TURKEY CREEK TO SOUTH	PRONG OF ST MAR
	MADEIRA BEACH		00441W	1952		HUCA CIEGA BAY	
	MADISON		-	X		SWAMP TO SUWANNEE RIVER	
	MAITLAND		02921W	1963		SNAKE RUN CREEK	TO LAKE HOWELL
DUCK KEY	MARATHON		-	X		TOMS HARBOR TO	ATLANTIC OCEAN
MARCO BEACH SD	MARCO		-	X		BAY	
	MARGATE		-	X		MARGATE CANAL TO	POMPANO CANAL
LAUDERHILL SD	MARGATE		-	X		FLA STATE TURNPIKE CANAL	TO CANAL C-12
LYONS PARK SD	MARGATE		-	X		CYPRESS CREEK TO	INTRACOASTAL WA
	MARIANNA		03101W	1967		MARSHALL CREEK TO	CHIPOLA RIVER
SPRINGDALE	MARY ESTHER		01081W	1965		SILVER SANDS CREEK TO	SANTA ROSA SOUN
SD	MEADOWBROOK		-	X		MCGINTS CREEK	TO ST JOHNS RIV
	MELBOURNE		00746W	1953		CRANE CREEK TO	INDIAN RIVER
/S O/	MERRITT ISLAND		-	X		SYKES CREEK	NEWFOUND HARBOR
VETTER ISLES EST SD	MERRITT ISLAND		-	X		SYKES CREEK	
VIRGINIA KEY PLANT	MIAMI		02554W	1956	Yes	ATLANTIC OCEAN	
ANDOVER SD	MIAMI		-	X		SNAKE CREEK	
COUNTRY CLUB ESTATES	MIAMI		-	X		PD TO PETER PIKE CAN TO	SNAKE CR TO BIS
GOLDEN ISLES SD	MIAMI		-	X		OLETA RIVER TO	BISCAYNE BAY
MIAMI LAKES SD	MIAMI		-	X		NW 13RTH ST CN-KED RD CNTO	BISCAYNE CAN
S CORAL HOMES SD	MIAMI		-	X		BLACK CREEK CANAL TO	BISCAYNE BAY
PAN AMERICAN HOSP	MIAMI		-	1970		TAMIAMI CANAL C-4	
WEST CORAL WAY AREA	MIAMI		-	X		CORAL GABLES CREEK TO	BISCAYNE BAY
AIRPORT LANES	MIAMI		-	1960		TAMIAMI CANAL	
HOLIDAY INN-S ROYAL	MIAMI		-	X		MIAMI CANAL	
MY-AM-LE MOBILE HOME	MIAMI		-	1968		TAMIAMI CANAL C-4	
	MIAMI BEACH		-	X		ATLANTIC OCEAN	
SHORES CONDOMINIPL	MIAMI SHORES		-	1964		BISCAYNE BAY	
PELICAN BEACH SD	MICCO		-	X		SEBASTIAN RIVER	
	MILTON		00401W	1959		BLACKWATER RIVER	
SANTA VILLA SD	MILTON		-	X		CREEK	
	MIRAMAR		01241W	1955		SUNSHINE PARKWAY CANAL	TO SNAKE CREEK
	MONTICELLO		00471W	1961		WOLF AND BUGGS CREEKS	TO AUCILLA RIVE
	MT DORA		-	X		LAKE DORA TO	OKLAWAHA RIVER
	MULBERRY		02711W	1955		ALAFIA RIVER	
	NAPLES		00016W	1958		GORDON RIVER TO	NAPLES BAY
GLADEN GATE SD	NAPLES		-	X		DRAINAGE CANAL TO GORDONRIVER & NAPLES	
	NAVARRE BEACH		03487W	1972		SANTA ROSA SOUND	
	NEPTUNE BEACH		03261W	X		PABLO CREEK TO	INTRACOASTAL WA
	NEW PORT RICHEY		00351W	1964		CROSS BAYOU TO	GULF OF MEXICO
JASMINE LAKE SUBDIV	NEW PORT RICHEY		-	X		CANAL TO GULF OF MEXICO	
FLOR-A-MAR SUBDIV	NEW PORT RICHEY		-	X		CANAL TO GULF OF MEXICO	
	NEW SMYRNA BEACH		00231W	1965		INDIAN RIVER	TO ATLANTIC
SILVER RIDGE SD	NEW SMYRNA BEACH		-	X		POND TO DRAINAGE DITCH	TO MOSQUITO LAG
	NICEVILLE		01785W	1957		VALPARAISO BAY	
	NORTH BAY VILLAGE		-	X		BISCAYNE BAY	
FIESTA VILLAGE SD	NORTH FORT MYERS		-	X		IONA CANAL TO	WHISKEY CREEK
WATERWAY ESTATES SD	NORTH FORT MYERS		-	X		CANAL TO	CALOOSAHATCHEE
	NORTH MIAMI		03111W	X		OCEAN OUTFALL	ATLANTIC OCEAN

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
	LONGBOAT KEY	52	0000034	0000010	00000180				
SUNLAKE PARK SD	LUTZ	59	0000350	X	00000147				
	LYNN HAVEN	53	0000142	0000050	00000780				
	MACCLENNY	34	0000045	0000116	00000750				
	MADEIRA BEACH	33	0002000	0001210	00006300				
	MADISON	53	0000350	0000160	00001400				
	MAITLAND	54	0000450	0001100	00011000				
DUCK KEY	MAKAIMON	52	0000050	X	00000950				
MARCO BEACH SD	MARCO	57	0000070	0000076	00000500				
	MARGATE	53	0001200	0001540	00010160				
LAUDERHILL SD	MARGATE	53	0000450	0000600	00006430				
LYONS PARK SD	MARGATE	53	0000500	0000440	00004100				
	MARIANNA	53	0001140	0000460	00007700				
SPRINGDALE	MARY ESTHER	51	0000500	0000185	00001550				
SD	MEADOWBROOK	53	0000123	0000325	00004460				
	MELBOURNE	53	0002500	0001320	00015900				
/S D/	MERRITT ISLAND	59	0000400	0000400	00001385				
VETTER ISLES EST SD	MERRITT ISLAND	54	0000450	0000240	00002000				
VIRGINIA KEY PLANT	MIAMI	51	0047000	0047500	00550000				
ANDOVER SD	MIAMI	54	0001700	0001714	00006900				
COUNTRY CLUB ESTATES	MIAMI	54	0000200	0000185	00002000				
GOLDEN ISLES SD	MIAMI	54	0000500	0000542	00004809				
MIAMI LAKES SD	MIAMI	54	0000450	0000727	00001300				
S CORAL HOMES SD	MIAMI	51	0001575	X	00001000				
PAN AMERICAN HOSP	MIAMI	51P	0000036	0000036	X				
WEST CORAL WAY AREA	MIAMI	51	0002250	0001500	00012490				
AIRPORT LANES	MIAMI	51P	0000022	0000011	00000240				
HOLIDAY INNS ROYAL	MIAMI	54P	0000025	X	00000160				
MY-AM-LE MOBILE HOME	MIAMI	54P	0000030	0000030	00000300				
	MIAMI BEACH	10	-	0021000	00032000				
SHORES CONDOMINIZL	MIAMI SHORES	51P	0000020	X	00000200				
PELICAN BEACH SD	MICCO	53	0000112	X	00000500				
	MILTON	53	0001000	0001200	00007300				
SANTA VILLA SD	MILTON	57	0000014	0000014	00000140				
	MIRAMAR	53	0003000	0001000	00024272				
	MONTICELLO	51	0000300	0000190	00002400				
	MT DORA	53	X	X	00000500				
	MULBERRY	6	0000500	0000250	00002400				
	NAPLES	51	0002500	0001300	00020000				
GLADEN GATE SD	NAPLES	57	0000300	X	00001000				
	NAVARRE BEACH	53	0000125	X	X				
	NEPTUNE BEACH	5	0000750	X	00002670				
	NEW PORT RICHEY	53	0000750	0000359	00003535				
JASMINE LAKE SUBDIV	NEW PORT RICHEY	57	0000053	X	00000525				
FLOR-A-MAR SUBDIV	NEW PORT RICHEY	53	0000140	0000046	00001000				
	NEW SMYRNA BEACH	51	0001200	0001200	00007300				
SILVER RIDGE SD	NEW SMYRNA BEACH	53	0000150	X	00001000				
	NICEVILLE	53	0000500	0000350	00004500				
	NORTH BAY VILLAGE	51	0000800	0000456	00002500				
FIESTA VILLAGE SD	NORTH FORT MYERS	53	0000105	0000035	00000350				
WATERWAY ESTATES SD	NORTH FORT MYERS	51	0000270	0000140	00000785				
	NORTH MIAMI	33	0013000	0013500	00024000				

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(1)		(2)	(3)	(4)	(5)	(6)
TOWNSITES	NORTH ORLANDO		-	1961		GEE CREEK TO LAKE JESUP
N PALM BCH UTILITIES	NORTH PALM BEACH		-	X		KANMAS RIVER TO LAKE WORTH
	NORTH PORT CHARLOTTE		-	X		CREEK TO MYAKKA RIVER TOGULF OF MEXICO
	NORTH PORT CHARLOTTE		-	X		CREEK TO MYAKKA RIVER TOGULF OF MEXICO
	NORTH PORT, ST LUCIE		-	X		DRAINAGE CANAL TO ST LUCIE RIVER
	OAKLAND PARK		01895W	X		CYPRESS CREEK TO INTRACOASTAL WA
	OCALA		01981W	X		UNDERGROUND WATERS
PLANT #2	OCALA		01981W	1971		EVAPORATION LAGOON
	OKALOOSA COUNTY		02777W	1972		GROUND
	OKEECHOBEE		00027W	1959		TAYLOR CREEK TO LAKE OKEECHOBEE
	OLDSMAR		00631W	1965		TAMPA BAY
CORONADO SD	OPA-LOCKA		-	X		BROWN BAY
OPA LOCKA AIRPORT	OPA-LOCKA		-	X		BISCAYNE CANAL C-8
SOUTHWEST SD	ORANGE COUNTY		02261W	X		SHINGLE CREEK TO KISSIMMEE RI
NORTHWEST SD	ORANGE COUNTY		02273W	X		LAKE LAWNE TO WEKIVA R TO ST JOHNS R
	ORANGE PARK		00517W	1970		SAINT JOHNS RIVER
GROVE PARK SD	ORANGE PARK		-	X		SPRING BRANCH THIR TO DOCTORS
HOLLYCREST SD	ORANGE PARK		-	X		INDIGO BRANCH TO DOCTORS INLET
ROBINETTE SD	ORANGE PARK		-	X		DOCTORS LAKE
HENNETT RD PLANT	ORLANDO		00791W	1962		LITTLE ECONLOCKHATCHEE R TO ECONLOCKHA
AZALEA PARK	ORLANDO		-	X		CREEK TO LITTLE ECONLOCKHATCHEE
HONNEVILLE SD	ORLANDO		-	X		LITTLE ECONLOCKHATCHEE RIVER
CATALINA PARK SD	ORLANDO		-	X		LAKE WESTON TO LITTLE WEKIVA R
SOUTHWEST #2	ORLANDO		02387W	X		SHINGLE CREEK
CONWAY MANOR SD	ORLANDO		-	X		CANAL TO LITTLE ECONLOCKHATCHEE
CORRINE TERRACE SD	ORLANDO		-	X		LITTLE ECONLOCKHATCHEE RIVER
LYNNWOOD SD	ORLANDO		-	X		CULVERT TO LAKE WEKIVA RIVER
LAKE LAWNE SHORES	ORLANDO		-	X		LAKE LAWNE TO WEKIVA RIVER
COUNTRY CLUB HEIGHTS	ORLANDO		-	X		SOLDIERS CREEK TO LAKE JESSUP
PK MANOR EST SD	ORLANDO		-	X		CANAL TO LITTLE ECONLOCKHATCHEE
PINE HILLS SUBD	ORLANDO		-	X		LAKE LAVINA TO WEKIVA RIVER
PLANTATION SD	ORLANDO		-	X		LAKE LOVELY TO WEKIVA RIVER
RIVERSIDE PK EST SD	ORLANDO		-	X		LITTLE WEKIVA RIVER TO ST JOHNS RIV
ROCKET CITY SD	ORLANDO		-	X		DITCH TO BIG ECONLOCKHATCHEE
ASHURY PARK SD	ORLANDO		-	X		LAKE WESTON TO WEKIVA R TO ST JOHNS RIV
ARCADIA ACRES SD	ORLANDO		-	X		LITTLE ECONLOCKHATCHEE RIVER
UNIVERSITY SHORES SD	ORLANDO		-	X		LITTLE ECON R TO ECON R TO SAINT JOHNS
WEATHERFIELD SD	ORLANDO		-	X		LITTLE WEKIVA RIVER TO ST JOHNS RIV
	ORMOND BEACH		00595W	1963		MALIFAX RIVER
EMERALD ISLES SD	ORMOND BEACH		-	X		MALIFAX RIVER TO ATLANTIC OCEAN
ROUND LAKE EST SD	OVIEDO		-	X		ROUND LAKE
	PAHOKEE		01391W	1966		POND TO PELICAN RIVER CANAL TO LAKE O
	PALATKA		00337W	1959		SAINT JOHNS RIVER
	PALM BAY			X		TURKEY CREEK
MEADOWBROOK SD	PALM BEACH COUNTY		-	X		LAKE WORTH DRAINAGE DISTRICT L-2
INTERNAT AIRPORT	PALM BEACH COUNTY		-	1962		PALM BEACH CANAL TO LAKE WORTH TO A
	PALM BEACH		04083W	X		LAKE WORTH IO ATLANTIC OCE
GRAMERAY PARK SD	PALM BEACH		-	X		DRAINAGE DITCH TO CANAL C-17
POLO CLUB ESTATES SD	PALM BEACH		-	X		LWDD CANAL #7
	PALMETTO		-	X		TERRA CEIA BAY TO GULF
BAYWOOD VILLAGE	PALM HARBOR		-	X		GULF OF MEXICO
	PALM SPRINGS		-	X		LAKE WORTH

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
TOWNSITES	NORTH ORLANDO	53	0000350	0000300	00001000				
N PALM BCH UTILITIES	NORTH PALM BEACH	53	0000345	0001310	00010555				
	NORTH PORT CHARLOTTE	57	0000070	A	00000180				
	NORTH PORT CHARLOTTE	59	0000350	0000260	00001110				
	NORTH PORT ST LUCIE	59	A	0000270	00000470				
	OAKLAND PARK	51	0004100	0002100	00020000				
	OCALA	59	0004460	A	00013750				
PLANT #2	OCALA	59	0003000	0001200	A				
	OKALOOSA COUNTY	51	0000900	A	A				
	OKEECHOBEE	51	0001900	A	00001445				
	OLDSMAR	53	0001300	0000125	00001440				
CORONADO SD	OPA-LOCKA	51	0000030	A	00000300				
OPA LOCKA AIRPORT	OPA-LOCKA	56	0001000	0000163	A				
SOUTHWEST SD	ORANGE COUNTY	6	0004000	0003300	00021000				
NORTHWEST SD	ORANGE COUNTY	54	0001500	0001700	00015000				
	ORANGE PARK	54	0000600	0000390	00004400				
GROVE PARK SD	ORANGE PARK	52	0000035	0000018	00000300				
HOLLYCREST SD	ORANGE PARK	52	0000035	A	00000300				
ROBINETTE SD	ORANGE PARK	51	0000012	A	00001155				
PENNETT RD PLANT	ORLANDO	53	0000000	0000440	00004400				
AZALEA PARK	ORLANDO	53	0000437	0000320	00004440				
BONNEVILLE SD	ORLANDO	53	0000107	0000090	00001035				
CATALINA PARK SD	ORLANDO	53	0000035	0000023	00000350				
SOUTHEAST #2	ORLANDO	53	0012000	A	00024200				
CONWAY MANOR SD	ORLANDO	53	0001175	0000170	00001500				
CONWINE TERRACE SD	ORLANDO	53	0000150	0000075	00000500				
LYNNWOOD SD	ORLANDO	51	0000035	0000010	00000300				
LAKE LANE SHORES	ORLANDO	53	0000140	0000140	00001100				
COUNTRY CLUB HEIGHTS	ORLANDO	57	0000044	0000009	00000110				
PK MANOR EST SD	ORLANDO	51	0000262	0000052	00000260				
PINE HILLS SUBD	ORLANDO	53	0000450	0000450	00003700				
PLANTATION SD	ORLANDO	53	0000070	0000056	00000460				
RIVERSIDE PK EST SD	ORLANDO	53	0000028	0000012	00000190				
ROCKET CITY SD	ORLANDO	54	0000070	0000010	00000100				
ASBURY PARK SD	ORLANDO	53	0000325	0000321	00002440				
ARCADIA ACRES SD	ORLANDO	53	0000056	0000029	00000230				
UNIVERSITY SHORES SD	ORLANDO	53	0000125	A	00000100				
WEATHERFIELD SD	ORLANDO	53	0000175	0000096	00001510				
	ORMOND BEACH	53	0002000	0000675	00006500				
EMERALD ISLES SD	ORMOND BEACH	54	0000035	A	00000300				
POUND LAKE EST SD	OVIEDO	54	0000070	A	00001425				
	PAHOKEE	51	0000500	0000450	00004400				
	PALATKA	33	0001750	0000700	00012200				
	PALM BAY	54	0000200	0000100	00001100				
MEADOWBROOK SD	PALM BEACH COUNTY	53	0000350	0000150	00001985				
INTERNAT AIRPORT	PALM BEACH COUNTY	33	0000540	0000160	00001600				
	PALM BEACH	10	-	A	00003000				
GRAMERAY PARK SD	PALM BEACH	53	0000175	0000060	00000410				
POLO CLUB ESTATES SD	PALM BEACH	53	0000175	0000080	00001400				
	PALMETTO	53	0001400	A	00004500				
BAYWOOD VILLAGE	PALM HARBOR	51	0000149	0000030	00000565				
	PALM SPRINGS	53	0000125	0000546	00004785				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	BEGIN OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
MILLVILLE PLANT	PANAMA CITY		-	X		WATSON BAYOU TO SAINT	ANDREWS BAY
POINT ROYAL HOMES SD	PANAMA CITY		-	X		CANAL TO	ST ANDREWS BAY
ST ANDREWS PLANT	PANAMA CITY		02231W	X		SAINT ANDREWS BAY	
WOODLAWN SD	PANAMA CITY		-	X		NORTH BAY TO ST ANDREWS BAY	
	PEMBROKE PINES		03333W	X		WEST HOLLYWOOD DRAINAGE DIST TO SNAKE C	
	PENNY FARMS		-	X		DRAINAGE DITCH TO	BLACK CR TO ST
MAIN ST PLANT	PENSACOLA		01146W	1967	Yes	PENSACOLA BAY	
NE PLANT	PENSACOLA		00091W	1960		PENSACOLA BAY	
AVONDALE SD	PENSACOLA		-	1970		BAYOU MARCUS CREEK	TO ESCAMBIA RIV
CARROLLWOOD SD	PENSACOLA		-	X		THOMPSON BAYOU TO	ESCAMBIA RIVER
DEVONSHIRE SD	PENSACOLA		-	X		BAYOU MARCUS CREEK	
LINCOLN PARK SD	PENSACOLA		-	X		8 MILE CR TO 11 MILE CR	TO PENDIDO BAY
MAYFAIR SUBDIVISION	PENSACOLA		-	X		BAYOU MARCUS CREEK TO	PENDIDO BAY
MONTCLAIR SUBD	PENSACOLA		-	X		BAYOU MARCUS CREEK	TO PENDIDO BAY
PEN HAVEN SUB	PENSACOLA		-	X		DITCH TO BAYOU CHICO	
SCENIC HILLS SD	PENSACOLA		-	X		THOMPSON BAYOU TO	ESCAMBIA R-ESCA
WARRINGTON SD	PENSACOLA		-	X		BAYOU CHICO CREEK	
WEDGEWOOD SD	PENSACOLA		-	X		POND TO BAYOU MARCUS	CREEK TO PENDID
BEL-AIRE SD	PERRINE		-	1968		GROUND (60%) AND CANAL	C-100 (40%)
S MIAMI HEIGHTS SD	PERRINE		-	1957		BLACK CREEK TO	BISCAYNE BAY
	PERRY		00417W	1959		ROCKY CREEK TO	FENHOLLOWAY RIV
CROSS BAYOU PLANT	PINELLAS COUNTY		00431W	1962		JOES CREEK	
	PINELLAS PARK		00421W	1961		CROSS BAYOU CANAL	
	PLANTATION		03031W	X		EAST HOLLOWAY CANAL TO	NORTH NEW RIVER
	PLANT CITY		00731W	1950		PEMBERTON CREEK TO LAKE	THONOTOSASSA
	PLANTATION ISLES		-	X		N SOUTH HOLLOWAY CANAL TO N	NEW RIVER
LAKE GIBSON ESTATES	POLK COUNTY		-	X		EFFLUENT TO DRAINAGE	DITCH TO GIBSON
	POMPANO BEACH		03683W	X		POMPANO CANAL	ATLANTIC OCEAN
BROADVIEW CTRY CL ES	POMPANO BEACH		-	X		CA C-12 TO MIDDLE R TO	INTRACOASTAL WA
CARVER HOMES	POMPANO BEACH		-	X			SOAKAGE LAGOON
CULLIEN MANOR	POMPANO BEACH		-	X		DRAINAGE WELL	1100 FT DEEP
HIGHLANDS A	POMPANO BEACH		-	X		DRNGE DCH-CORAL KEY WTWY	TO INTRACOASTAL
HIGHLANDS B	POMPANO BEACH		-	X		CORAL KEY WATERWAY TO	INTRACOASTAL WA
	PORT CHARLOTTE		-	X		ALLIGATOR RIVER TO	CHARLOTTE HARBO
	PORT CHARLOTTE		-	X		CANAL PELLAN WATERWAY	TO PEACE RIVER
	PORT ORANGE		01237W	1964		HALIFAX RIVER	TO ATLANTIC OCE
	PORT ST JOE		03181W	X		SAINT JOSEPHS BAY	
	PUNTA GORDA		02487W	X		PEACE RIVER TO	CHARLOTTE HARBO
HARBOUR HEIGHTS SD	PUNTA GORDA		-	X		DE SOTO CANAL TO	PEACE RIVER
PORT CHARLOTTE SD	PUNTA GORDA		-	X		ALLIGATOR RIVER	
	QUINCY		-	X		QUINCY CREEK TO LITTLE R	TO OCHLOCKONEE
OAK PARK SUBD	QUINCY		-	X		TANYARD CREEK	
	RIVIERA BEACH		00257W	1955		LAKE WORTH	TO ATLANTIC OCE
	ROCKLEDGE		00966W	1964		INDIAN RIVER	
	ROYAL PALM BEACH		-	X		WEST PALM BEACH CANAL	
APOLLO BEACH SD	RUSKIN		-	X		CANAL TO TAMPA BAY	
DEL WEBB SUN CITY	RUSKIN		-	X		CYPRESS CREEK TO	TAMPA BAY
CITY	SAFETY HARBOR		00761W	X		MULLET CREEK TO	OLD TAMPA BAY
VIRGINIA GROVES EST	SAFETY HARBOR		-	X		ALLIGATOR CREEK	TO OLD TAMPA BA
	ST AUGUSTINE		00181W	1963		SAN SEBASTIAN AND	MANTANZAS RIVER
DAVIS SHORES PLANT	ST AUGUSTINE		00186W	1962		MATANZAS RIVER	
ST AUGUSTINE HGTS SD	ST AUGUSTINE		-	X		STREAM TO MANTANZAS	RIVER

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
MILLVILLE PLANT	PANAMA CITY	53	000.0000	0001.000	00016500				
POINT ROYAL HOMES SD	PANAMA CITY	52	0000.070	A	00000700				
ST ANDREWS PLANT	PANAMA CITY	54	0002.000	A	00010000				
WOODLAWN SD	PANAMA CITY	32	0000.110	0000.030	00000350				
	PEMBROKE PINES	51	0001.400	0000.400	00021000				
	PENNY FARMS	55	0000.060	A	00000400				
MAIN ST PLANT	PENSACOLA	51	0000.000	0007.600	00054000				
NE PLANT	PENSACOLA	59	0000.650	0000.650	00006500				
AVONDALE SD	PENSACOLA	54	A	0000.070	00000700				
CARROLLWOOD SD	PENSACOLA	31	0000.040	A	00000400				
DEVONSHIRE SD	PENSACOLA	51	0000.017	A	00003100				
LINCOLN PARK SD	PENSACOLA	51	0000.025	A	00000200				
MAYFAIR SUBDIVISION	PENSACOLA	53	0000.175	0000.050	00005500				
MONTCLAIR SUBD	PENSACOLA	53	0000.525	0000.263	00001900				
PEN HAVEN SUB	PENSACOLA	53	0000.300	0000.115	00005250				
SCENIC HILLS SD	PENSACOLA	51	0000.020	A	00000200				
WARRINGTON SD	PENSACOLA	51	0000.175	0000.055	00001900				
WEDGEWOOD SD	PENSACOLA	53	0000.175	0000.004	00000240				
BEL-AIRE SD	PERRINE	53	0000.525	0000.423	00004700				
S MIAMI HEIGHTS SD	PERRINE	51	0001.750	0001.049	00015000				
	PERRY	33	0001.250	0000.620	00005900				
CROSS BAYOU PLANT	PINELLAS COUNTY	53	0005.000	0003.500	00057125				
	PINELLAS PARK	54	0001.500	0001.230	00016400				
	PLANTATION	53	0000.000	0001.900	00016000				
	PLANT CITY	53	0003.000	A	00013400				
	PLANTATION ISLES	53	0001.500	0000.500	00007200				
LAKE GIBSON ESTATES	POLK COUNTY	52	0000.021	A	00000210				
	POMPANO BEACH	2	0003.000	0003.050	00030420				
BROADVIEW CIVY CL ES	POMPANO BEACH	53	0000.406	0000.340	00004200				
CARVER HOMES	POMPANO BEACH	53	0000.375	0000.360	00000765				
COLLIER MANOR	POMPANO BEACH	53	0000.500	0000.480	00010500				
HIGHLANDS A	POMPANO BEACH	53	0000.500	0000.346	00010500				
HIGHLANDS B	POMPANO BEACH	51	0000.350	0000.310	00003375				
	PORT CHARLOTTE	52	0000.580	0000.343	00006755				
	PORT CHARLOTTE	54	0000.030	A	00000100				
	PORT ORANGE	53	0000.370	0000.320	00003200				
	PORT ST JOE	33	0000.350	0000.260	00004150				
	PUNTA GORDA	53	0001.000	A	A				
HARBOUR HEIGHTS SD	PUNTA GORDA	57	0000.032	A	00000300				
PORT CHARLOTTE SD	PUNTA GORDA	53	0000.420	0000.218	00002755				
	QUINCY	53	0001.200	0000.050	00005100				
OAK PARK SUBD	QUINCY	55	0000.014	0000.004	00000035				
	RIVIERA BEACH	53	0002.450	0001.700	00014465				
	ROCKLEDGE	6	0001.500	0000.760	00004200				
	ROYAL PALM BEACH	53	0000.250	0000.056	00000400				
APOLLO BEACH SD	RUSKIN	53	0000.104	0000.085	00000465				
DEL WEBBS SUN CITY	RUSKIN	57	0000.200	0000.160	00003400				
CITY	SAFETY HARBOR	53	0000.350	0000.150	00003500				
VIRGINIA GROVES EST	SAFETY HARBOR	53	0000.100	0000.010	00000100				
	ST AUGUSTINE	33	0002.000	0001.620	00007500				
DAVIS SHORES PLANT	ST AUGUSTINE	33	0001.000	0000.435	00002500				
ST AUGUSTINE HGTS SD	ST AUGUSTINE	57	0000.035	0000.014	00000300				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	BEGIN. OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
	ST CLOUD		00405W	1954		EAST TOHOPEKALIGA	LAKE
ALBERT WHITTED PLANT	ST PETERSBURG		01107W	X		TAMPA BAY	
NORTHEAST PLANT #1	ST PETERSBURG		01101W	X		TAMPA BAY	
NORTHWEST PLANT #2	ST PETERSBURG		01998W	X		BOCA CIEGA BAY	
SOUTHWEST PLANT	ST PETERSBURG		01642W	X		TAMPA BAY	
BAY PINES SD	ST PETERSBURG		-	X		TIDAL DITCH TO	BOCA CIEGA BAY
BEAR CREEK SD	ST PETERSBURG		01754W	X		BOCA CIEGA BAY	
CUMLEW CITY	ST PETERSBURG		-	X		LARGE DR DITCH TO	UPPER TAMPA BAY
RIDGEWOOD GROVES SD	ST PETERSBURG		-	X		DRAINAGE CANAL TO	LONG BAYOU
TROPIC HILL SD	ST PETERSBURG		-	X		DRAINAGE DITCH TO	TAMPA BAY
TIERRA VERDE SD	ST PETERSBURG		-	X		EAST WATERWAY	
LONG KEY SEWER DIST	ST PETERSBURG BEACH		00076W	1958		BOCA CIEGA BAY	
SEWAGE TREATMENT PLT	SANFORD		00381W	1964		SAINT JOHNS RIVER	
	SANIBEL ISLAND		-	X		EVAP-PERCOLATION POND	
SANTA ROSA SHORES SD	SANTA ROSA COUNTY		-	X		DITCH TO SANTA ROSA	SOUND
ISLAND AUTHORITY	SANTA ROSA		-	X		SANTA ROSA SOUND	
	SARASOTA		01976W	X		WHITAKER BAY TO	SARASOTA BAY
BERKSHIRE ESTATES SD	SARASOTA		-	X		DRAINAGE CANAL TO COW	PEN SLOUGH TO S
BRENTWOOD ESTATES SD	SARASOTA		-	X		MAIN #1 (FRUITVILLE DR	DIST) TO PHILLI
SOUTH GATE SD	SARASOTA		-	X		PHILLIPPI CREEK TO	ROBERTS BAY
GULF GATE SD	SARASOTA		-	X		POND TO CULVT TO MATHENY	CREEK TO SARASO
RIDGEWOOD ESTATES SD	SARASOTA		-	X		FRUITVILLE DRAINAGE	TO PHILLIPPI CR
SIESTA ISLES	SARASOTA		-	X		IMPROVED CANAL TO	ROBERTS BAY
	SEMINOLE		00711W	1965		ANNUCKLE CREEK TO LAKE	ISTOKPUGA TO KI
	SNEADS		-	X		DITCH TO HAMM POND	
	SOUTH PORT ST LUCIE		-	X		SAINT LUCIE RIVER	
	STARKE		00957W	1966		ALLIGATOR CR TO SANTA FEE	TO SUWANNEE R
	STUART		03241W	X		SAINT LUCIE RIVER	TO INDIAN RIVER
	SULPHUR SPRINGS		-	-		HILLSBORO RIVER	
LI'L ABNER TRAIL PK	SWEETWATER		-	1968		SNAPPER CREEK C-2	
LAKE BRADFORD PLT	TALLAHASSEE		01331W	X		SAINT AUGUSTINE BRANCH	TO LK HENRIETTA
DALE MABRY PLT	TALLAHASSEE		01337W	X		CREEK TO LAKE HENRIETTA	TO LAKE MUNSON
SOUTHWEST PLANT	TALLAHASSEE		01337W	1966		POLISHING POND TO SPRAY	IRRIGATION 4 AC
	TARPAC		-	X		CANAL 13 TO	ATLANTIC OCEAN
	TAMPA		03827W	X	Yes	LOWER MC KAY BAY	AND HILLSBOROUG
TAMPA SUBURBAN ST CO	TAMPA		-	X		SWEETWATER CREEK	TO OLD TAMPA BA
ADAMO ACRES SUBD	TAMPA		-	X		PALM RIVER	TO MCKAY BAY
ANITA SUBD	TAMPA		-	X		DRAINAGE DITCH TO	TAMPA BAY
BAY CREST PARK SD	TAMPA		-	X		CANAL TO TAMPA BAY	
CARROLLWOOD SD	TAMPA		-	X		SWEETWATER CREEK	
CLAIRMEL CITY SD	TAMPA		-	X		DELANEY CREEK	TO HILLSBOROUGH
LAKEWOOD ESTATES SD	TAMPA		-	X		DRAINAGE CANAL TO	HILLSBORO RIVER
MANHATTEN SUBD	TAMPA		-	X		DRAINAGE DITCH TO	TAMPA BAY
PALMA CEIA PARK	TAMPA		-	X		HILLSBOROUGH BAY	
PINE CREST VILLA SD	TAMPA		-	X		DRAINAGE CANAL TO	SWEETWATER CREE
PROGRESS VILLAGE SD	TAMPA		-	X		COUNTY DRAINAGE TO	HILLSBOROUGH BA
RIVER OAK ESTATE SD	TAMPA		-	X		ROCKY CREEK TO	TAMPA BAY
RIVERSIDE HOMES	TAMPA		-	X		HILLSBOROUGH RIVER	
TAMPA SHORES	TAMPA		-	X		CANAL TO OLD TAMPA BAY	
TOWN & COUNTRY PARK	TAMPA		-	X		SWEETWATER CREEK	TO TAMPA BAY
	TARPON SPRINGS		-	X		ANCLOTE RIVER	
NORTH PLANT	TITUSVILLE		00457W	1960		INDIAN RIVER	TO ATLANTIC OCE

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
	ST CLOUD	53	0001[illegible]00	000[illegible]780	0000[illegible]000				
ALBERT WHITTED PLANT	ST PETERSBURG	54	0020000	0016000	0009[illegible]000				
NORTHEAST PLANT #1	ST PETERSBURG	51	0001[illegible]00	000[illegible]300	0002[illegible]500				
NORTHWEST PLANT #2	ST PETERSBURG	54	0001[illegible]00	A	0004[illegible]500				
SOUTHEAST PLANT	ST PETERSBURG	51	0001[illegible]60	0005[illegible]00	0003[illegible]000				
HAY PINES SD	ST PETERSBURG	53	0000240	0001127	0001[illegible]000				
BEAR CREEK SD	ST PETERSBURG	51	0001[illegible]00	A	0001[illegible]000				
CUNLEY CITY	ST PETERSBURG	52	0000125	0000[illegible]008	0000[illegible]195				
RIDGEWOOD GROVES SD	ST PETERSBURG	53	0000105	A	0000[illegible]500				
TROPIC HILL SD	ST PETERSBURG	53	0000[illegible]77	0001[illegible]036	0000[illegible]350				
TIERRA VERDE SD	ST PETERSBURG	52	0000[illegible]80	0000[illegible]030	0000[illegible]400				
LONG KEY SEWER DIST	ST PETERSBURG BEACH	5	0002[illegible]36	0001[illegible]200	0001[illegible]253				
SEWAGE TREATMENT PLT	SANFORD	3	0004[illegible]000	0002[illegible]490	0002[illegible]000				
	SANIBEL ISLAND	10	-	A	A				
SANTA ROSA SHORES SD	SANTA ROSA COUNTY	57		A	A				
ISLAND AUTHORITY	SANTA ROSA	53	0001[illegible]88	0001[illegible]500	0000[illegible]000				
	SARASOTA	51	0005[illegible]00	0003[illegible]000	0004[illegible]500				
HERKSHIRE ESTATES SD	SARASOTA	57	0000175	A	0000[illegible]70				
BRENTWOOD ESTATES SD	SARASOTA	53	0000127	0001[illegible]100	0000[illegible]000				
SOUTH GATE SD	SARASOTA	51	0000200	0001[illegible]120	0000[illegible]340				
GULF GATE SD	SARASOTA	54	0001[illegible]50	0001[illegible]289	0000[illegible]140				
RIDGEWOOD ESTATES SD	SARASOTA	53	0001[illegible]40	A	0000[illegible]000				
SIESTA ISLES	SARASOTA	52	0000125	0001[illegible]074	0000[illegible]500				
	SEBRING	57	0001[illegible]50	0001[illegible]150	0000[illegible]350				
	SNEADS	55	0000[illegible]10	0000[illegible]009	0000[illegible]110				
	SOUTH PORT ST LUCIE	52	0000165	0001[illegible]129	0000[illegible]170				
	STARKE	54	0001[illegible]00	0001[illegible]500	0000[illegible]000				
	STUART	53	0000320	0001[illegible]350	0000[illegible]000				
	SULPHUR SPRINGS	10	-	A	0000[illegible]530				
LITL AHNER TRAIL PK	SWEETWATER	57	0000150	0000[illegible]072	0000[illegible]600				
LAKE BRADFORD PLT	TALLAHASSEE	51	0004[illegible]00	0003[illegible]300	0005[illegible]000				
DALE MABRY PLT	TALLAHASSEE	51	0000[illegible]00	0000[illegible]450	0000[illegible]500				
SOUTHWEST PLANT	TALLAHASSEE	53	0002[illegible]00	0002[illegible]000	0001[illegible]000				
	TAMARAC	52	0000150	0001[illegible]106	0000[illegible]448				
	TAMPA	33	003[illegible]000	0024[illegible]039	0019[illegible]000				
TAMPA SUBURBAN ST CO	TAMPA	53	0001[illegible]84	0000[illegible]114	0000[illegible]140				
ADAMO ACRES SUBD	TAMPA	53	0000272	0000[illegible]041	0000[illegible]205				
ANITA SUBD	TAMPA	53	0000128	0001[illegible]130	0000[illegible]500				
BAY CREST PARK SD	TAMPA	53	0000[illegible]10	0000[illegible]220	0000[illegible]100				
CARROLLWOOD SD	TAMPA	53	0000[illegible]20	0000[illegible]020	0000[illegible]000				
CLAIR-MEL CITY SD	TAMPA	53	0000770	0000[illegible]264	0000[illegible]430				
LAKE WOOD ESTATES SD	TAMPA	53	0000175	0000[illegible]157	0000[illegible]485				
MANHATTEN SUBD	TAMPA	53	-	A	0000[illegible]550				
PALMA CEIA PARK	TAMPA	10	-	A	0000[illegible]600				
PINE CREST VILLA SD	TAMPA	57	0000[illegible]25	0000[illegible]450	0000[illegible]340				
PROGRESS VILLAGE SD	TAMPA	53	0000125	0000[illegible]122	0000[illegible]265				
RIVER OAK ESTATE SD	TAMPA	53	0000[illegible]25	A	0000[illegible]500				
RIVERSIDE HOMES	TAMPA	53	0000[illegible]10	0000[illegible]100	0000[illegible]410				
TAMPA SHORES	TAMPA	57	0000[illegible]48	A	0000[illegible]480				
TOWN & COUNTRY PARK	TAMPA	53	0000320	0000[illegible]687	0000[illegible]230				
	TARPON SPRINGS	33	0000[illegible]50	0000[illegible]410	0000[illegible]000				
NORTH PLANT	TITUSVILLE	51	0002000	0001[illegible]170	0001[illegible]000				

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	AGENCY	GRANT	BEGIN. OPER. DATE	APPLICATION PENDING	RECEIVING WATERS	
(1)		(2)	(3)	(4)	(5)	(6)	
SOUTH LAKE VILLAGE	TITUSVILLE		-	X		SOUTH LAKE TO	SAINT JOHNS RIV
WHISPERING LAKES	TITUSVILLE		-	X		WHISPERING LAKE TO	INDIAN RIVER
SOUTH PLANT	TITUSVILLE		01517W	1967		INDIAN RIVER	
	TREASURE ISLAND		02731W	1965		BOCA CIEGA BAY	
HARMONY HEIGHTS SUBD	TREASURE ISLAND		-	X		DITCH TO CROSS BAYOU	
	TRENTON		01721W	1970		GROUND	
	UMATILLA		01387W	1932		LAKE DALE	
	VALPARAISO		00991W	1964		TOMS CREEK TO	SUNSET BAY
MARION HEIGHTS SD	VALPARAISO		-	X		TOMS CREEK TO TOMS BAYOUTO CHOCTAWHATCH	
	VENICE		-	X		GULF OF MEXICO	
VENICE EAST SD	VENICE		-	X		ALLIGATOR CREEK	
VENICE GARDENS SD	VENICE		-	X		ALLIGATOR CREEK TO	GULF OF MEXICO
	VERNON		01651W	1968		CREEK TO	HOLMES CREEK
	VERO BEACH		00221W	1939		CANAL TO INDIAN RIVER	
DIXIE GARDENS & W SD	VERO BEACH		-	X		LATERAL J TO	INDIAN RIVER
IKOMA PARK SD	VERO BEACH		-	X		SOUTH RELIEF CANAL	TO INDIAN RIVER
PINEVIEW PARK SD	VERO BEACH		-	X		CANAL TO MAIN RELIEF	CANAL TO INDIAN
VERO BCH HIGHLDS SD	VERO BEACH		-	X		LATERAL J TO	INTERCOASTAL WA
DAYTONA PINES SD	VOLUSIA CO		-	X		X	
	WALDO		03647W	X		CREEK TO SANTA FE RIVER	
	WAUCHULA		00065W	1960		PEACE RIVER	
	WEST MELBOURNE		02511W	1965		DRAINAGE CANAL TO	CRANE CREEK TO
CITY	WEST PALM BEACH		02147W	1968	Yes	LAKE WORTH	
HELEVEDERE HGTS SD	WEST PALM BEACH		-	X		LAKE WORTH	
FOREST HILL VILLAGE	WEST PALM BEACH		-	X		PALM BEACH CANAL E-3	
GULFVIEW HEIGHTS SUB	WEST PALM BEACH		-	X		CANAL TO LAKE WORTH	
SUNSET HOMES SUBD	WEST PALM BEACH		-	X		CANAL TO LAKE WORTH TO	ATLANTIC OCEAN
	W PANAMA CITY BEACH		02141W	1969		WEST BAY	
	WEWAHITCHKA		00876W	1964		CHIPOLA RIVER	VIA UNNAMED CRE
	WHITE SPRINGS		02291W	1964		SUWANNEE RIVER	
	WILDWOOD		00371W	1959		DRAINAGE DITCH TO	SWAMPLAND-WITHL
	WILLISTON		-	X		LAGOON TO GROUND WATER	
	WINTER GARDEN		00771W	1948		LAKE APOPKA TO LAKE DORATO OKLAWAHA RIV	
	WINTER HAVEN		02217W	19X		LAKE LULU TO CANAL TO	PEACE CR TO PEA
LAKE CONINE PLANT	WINTER HAVEN		02217W	1972		LAKE CONINE	
	WINTER PARK		-	X		HOWELL CR TO LAKE HOWELLTO LAKE JESSUP	
WINTER PARK EST SD	WINTER PARK		-	X		SWAMP TO LITTLE	ECONLUCKHATCHEE
EAST ORLANDO SD	WINTER PARK		-	X		DRAINAGE CANAL TO	LITTLE ECONLOCK
EAST WINTER PARK SD	WINTER PARK		-	X		LAKE PEARL	
MINNEHAHA SHORES SD	WINTER PARK		-	X		DRAINAGE DITCH TO	LAKE MINNEHAHA
TANGLEWOOD SD	WINTER PARK		-	X		DRAINAGE CANAL TO	DRAINAGE WELL
	ZEPHYRHILLS		01677W	1968		X	

NAME OF PLANT (FACILITY)	LOCATION (COMMUNITY)	DEG TMT	DES FLOW	ACT. FLOW	EST. POP. SERVED	NOT OPER	OPER BELOW CAP	W/O TMT	BELOW CAP
(1)		(7)	(8)	(9)	(12)	(10-a)	(10-b)	(11-a)	(11-b)
SOUTH LAKE VILLAGE	TITUSVILLE	53	0000175	0000050	00000500				
WHISPERING LAKES	TITUSVILLE	53	0000123	0000040	00003700				
SOUTH PLANT	TITUSVILLE	5	0002000	0000600	00010000				
	TREASURE ISLAND	51	0002500	0001700	00013774				
HARMONY HEIGHTS SUBD	TREASURE ISLAND	53	0000255	0000080	00001200				
	TRENTON	5	0000150	X	X				
	UMATILLA	54	0000150	0000040	00000600				
	VALPARAISO	53	0000700	X	00003475				
MARION HEIGHTS SD	VALPARAISO	53	0000170	X	00000700				
	VENICE	53	0000600	0000420	00005100				
VENICE EAST SD	VENICE	57	0000270	0000118	00000240				
VENICE GARDENS SD	VENICE	54	0000300	0000163	00001100				
	VERNON	52	0000100	X	00000425				
	VERO BEACH	53	0002200	0001464	00010300				
DIXIE GARDENS & W SD	VERO BEACH	57	0000175	X	00000400				
LAURA PARK SD	VERO BEACH	53	0000098	X	00000500				
PINEVIEW PARK SD	VERO BEACH	52	0000035	X	00000300				
VERO BCH HIGHLDS SD	VERO BEACH	57	0000070	0000031	00000510				
DAYTONA PINES SD	VOLUSIA CO	59	X	X	X				
	WALDO	33	X	X	X				
	WAUCHULA	53	0003000	0000600	00002400				
	WEST MELBOURNE	59	0000500	0000160	00007400				
CITY	WEST PALM BEACH	51	0004000	0000970	00003400				
BELEVEDERE HGTS SD	WEST PALM BEACH	53	0000218	0000150	00001440				
FOREST HILL VILLAGE	WEST PALM BEACH	53	0000350	0000148	00001400				
GOLFVIEW HEIGHTS SUB	WEST PALM BEACH	53	0000144	0000150	00001440				
SUNSET HOMES SUBD	WEST PALM BEACH	53	0000218	0000200	00000735				
	N PANAMA CITY BEACH	5	0001000	0000500	00002400				
	NEWNAHITCHKA	53	0000025	X	00000400				
	WHITE SPRINGS	6	0000150	0000070	00000200				
	WILDWOOD	53	0000250	X	00002420				
	WILLISTON	53	0001200	0000112	00001480				
	WINTER GARDEN	54	0001000	0000700	00006400				
	WINTER HAVEN	53	0003000	0001270	00009400				
LAKE CONINE PLANT	WINTER HAVEN	5	0001700	X	X				
	WINTER PARK	51	0004500	0002200	00014000				
WINTER PARK EST SD	WINTER PARK	53	0000500	0000555	00006740				
EAST ORLANDO SD	WINTER PARK	53	0000175	0000152	00001380				
EAST WINTER PARK SD	WINTER PARK	53	0000227	X	00001000				
MINNEHAHA SHORES SD	WINTER PARK	55	0000012	X	00000100				
TANGLEWOD SD	WINTER PARK	53	0000100	0000069	00000550				
	ZEPHYRHILLS	5	X	X	X				

QUESTION NUMBER 3

On September 25, 1970, the Secretary of the Interior, at the request of the Governor of Florida, called a conference in the matter of pollution of the navigable waters of Dade County, Florida, and tributaries, embayments, and coastal waters, in accordance with Section 10 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.). The first session was held October 20, 1970, in Miami, and the parties were the Florida Department of Air and Water Pollution Control and the U. S. Department of the Interior, Federal Water Quality Administration.

The conferees, after two days of receiving testimony from Federal, State, and local officials and other interested parties, concluded that pollution which endangers the health and welfare of Dade County residents was occurring and that measures taken to abate this pollution were inadequate. The delays in pollution abatement were attributed to the complexity of the problem, a lack of effective planning, problems with financing and enforcement of pollution control laws, and a lack of a commitment by the community to meet and abate the pollution problem.

The conferees recommended that the Metropolitan Dade County Commission present, by November 1, 1971, a master plan for abatement of pollution from all sources in Dade County. The plan was to be in a form acceptable for certification under applicable State and Federal laws and regulations and was to contain sufficient detail so that all

significant sources would be identified. It was to include a time schedule for construction of remedial facilities with interim dates for arrangement of financing, preparation of preliminary plans and specifications, preparation of final plans and specifications, award of contracts, and initiation and operation of such facilities.

The conferees also recommended cessation of all waste discharges into the inland canal system of Dade County not later than January 1, 1973 and provision of a minimum of secondary treatment (90% BOD removal and year-round chlorination) for all ocean discharges not later than January 1, 1974. They further recommended that all new construction be connected to adequate sewage collection and treatment systems and that the Metropolitan Dade Commission be prepared to discuss an action plan for controlling additional sources of pollution during the design and construction period of a pollution abatement program, including particularly a program for the elimination of septic tanks in all urban areas of the county. They further recommended the prohibition of additional waste discharges to lower Biscayne Bay and its tributaries and canals draining to the Everglades. Removal of existing discharges from these waters was to be accomplished as rapidly as possible, but not later than January 1, 1974.

The Federal report at the first conference concluded that the canals of south Dade County exhibited some water quality degradation resulting from sewage effluent and high levels of nutrients indicative of subsurface seepage from septic tanks and agricultural runoff.

Because of the environmental constraints of discharging treated effluents to either lower Biscayne Bay and the Biscayne National Monument or to the inland canal system, the conferees recommended that deep well injection be considered in south Dade County. Dade County, in cooperation with the U. S. Geological Survey, was requested to monitor a deep well system already in operation at the Snapper Creek Plant.

These recommendations were designed to produce information to guide the conferees in future recommendations relative to the feasibility of deep well injection. Monitoring was done by USGS and is being continued by the company. The results have indicated that there has been no leakage to the freshwater aquifer through which the injection well passes.

As a result of recommendation No. 4 of the first session, requiring the Metropolitan Dade County Commission to prepare and present to the conferees by November 1, 1971, a master plan for abatement of pollution from all sources in Dade County, the county applied for and received a planning grant under Section 3(c) of the Federal Water Pollution Control Act in February 1971.

At the second session, the conferees noted that the county's interim report (consisting of a supplement to the 1961 master plan) on the development of an updated master plan indicated general progress. They called for a further interim progress report in April 1971. An "Amended Supplement to the 1961 Master Plan" was presented to the conferees at the third session of the conference July 2-3, 1971. It set forth the

concept of three regional waste treatment systems, one of which would be located in the Goulds-Perrine area of south Dade County.

At the third session of the conference, the conferees found that Dade County's amended interim regional plan was acceptable in principle as a first step in the development of the Master Plan called for at the first conference, but that it lacked an adequate time schedule for construction, arrangements for financing, and consideration of water reuse. These shortcomings were addressed in the county's final submission of the "Interim Water Quality Management Plan for Metropolitan Dade County," published June 25, 1972, and subsequently approved by the County Commissioners, the Florida Department of Pollution Control, and EPA. This plan was structured largely around the conclusions and recommendations of the three conference sessions. Copies of these three conference conclusions and recommendations are attached. (See Attachments 3-1, 3-2, and 3-3.)

At the first session of the Conference and at each succeeding session thereafter, Federal reports were presented analyzing the efficiency of approximately 76 major and minor municipal waste treatment plants. As a result of these reports, Dade County Pollution Control became considerably more active in the inspection and prosecution of violating sewage treatment plants. As a result of this activity, 15 small and medium-sized sewage treatment plants were closed, three existing plants expanded, and 21 new plants with advanced waste treatment were approved. Generally, all plants were brought up to or near the 90% removal efficiency for BOD_5 and TSS.

In addition, Dade County Pollution Control, pursuant to conference recommendations relative to septic tanks, imposed building permit holds on at least seven municipal waste treatment plants for problems associated with hydraulic overloading or poor operation and maintenance.

Also at each session, Federal reports were presented outlining the progress of a comprehensive "Industrial Waste Inventory" completed in September 1971. This report analyzed 36 industries not connected to sewers, 21 discharging to groundwater by various means, and 15 discharging to surface waters. The report concluded that industrial wastes were contaminating the inland waters of Dade County by the addition of oxygen-demanding materials, petroleum derivatives, coliform bacteria, and toxic substances; that the industries sampled contributed over half the BOD load discharged to inland Dade County waters; that pretreatment would be required of most industries to meet Dade County treatment requirements; that in-plant changes, recycling, and improved housekeeping techniques would substantially reduce waste discharges; and that a health hazard was presented by eleven food processing and paper mill industries discharging inadequately disinfected wastes. (See Attachment 3-4.)

As a result of these reports, Dade County Pollution Control increased its industrial waste enforcement activities significantly. By November 1971, Dade County Pollution Control had taken action against several of the industries listed in the report and only 13 of the original list were still considered a problem.

Dade County Pollution Control has also initiated a comprehensive storage tank inventory and approval program designed to control thousands

of storage tanks used for petroleum products, chemicals and other wastes.

Pursuant to repeated recommendations of the conferees relating to the elimination of septic tanks and the control of new septic tank installations, Dade County Pollution Control proposed a study to analyze the effects of septic tank effluent on the quality and quantity of groundwater. This study was initiated in August 1971 as a cooperative effort between Pollution Control and the U. S. Geological Survey. A thorough discussion of the data generated by this report and the ramifications thereof may be found in the environmental impact statement on Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida. (See Attachment 3-5.)

Finally, EPA has had some enforcement involvement in Dade County in addition to the Enforcement Conference. Thirteen companies were investigated and three were referred to the local U. S. Attorney for prosecution under the Refuse Act in March and in May 1972. Due to the efforts of Dade County Pollution Control, however, these companies came into compliance, and the need for prosecution was obviated. In addition, the U. S. Attorney initiated three other cases in cooperation with Pollution Control, obtaining two convictions for violations of the Refuse Act. Also, in March 1970, FWQA referred to the Justice Department a case against Florida Power and Light Company to enjoin its thermal discharges to Lower Biscayne Bay. This case resulted in a Consent Decree in September 1971, whereby the defendant agreed to install an extensive and complex cooling canal system. (See Question Number 12.)

A table showing the currently reported status of compliance with the recommendations of all three sessions of the enforcement conference is attached.

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SCHEDULES ESTABLISHED BY THE
DADE COUNTY ENFORCEMENT CONFERENCE

1gt Session: October 20-22, 1970
2nd Session: February 18-19, 1971
3rd Session: July 2-3, 1971

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
By February 1, 1971	Conferees will meet to consider the questions of Dade County's building permit program.	Recommendation 7, First Session.	Complied with. Conferees met and expressed dissatisfaction with Dade County's building permit program. However, there is no jurisdictional basis for taking affirmative action.
	Corps of Engineers will report to conferees on its program for removing abandoned hulks, debris, and other obstructions to navigation in the Miami River.	Recommendation 9, First Session.	Complied with.
By April 1, 1971	An inventory of all municipal and industrial waste sources, within Dade County, Florida, shall be initiated immediately by FWQA in cooperation with Florida and local officials, and a report shall be made to the conferees.	Recommendation 10, First Session	Complied with. Report completed and presented at 3rd session of the conference July 2-3, 1971.
April 13, 1971	County Manager's Office will bring an interim progress report to the attention of the conferees.	Recommendation 4, Second Session.	Complied with.

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
By April 13, 1971	A report on the upgrading and expansion of the Virginia Key Plant will be furnished the conferees.	Recommendation 4, Second Session.	Complied with.
	Corps of Engineers will report to conferees on its program for continuing the removal of abandoned hulks, debris, and other obstructions to navigation in the Miami River.	Recommendation 9, Second Session.	Complied with. The Corps has satisfactorily removed all sunken hulks.
	The Dade County Pollution Control Officer will report back to the conferees on remedial action taken towards compliance with State and County standards. Additionally, EPA will continue the inventory and analyses of both municipal and industrial waste sources and will give a final report with recommendations to the conferees.	Recommendation 10, Second Session.	Complied with. However, conferees, after reviewing EPA report, requested that minor sources be added to the inventory and that analyses be made of all industrial sources (see remarks under Recommendation 8, third session).
By April 13, 1971 and thereafter.	To insure compliance with Recommendation 7 of the first session, concerning building and occupancy permit approval, the conferees require interim reports from the Dade County Pollution Control Officer, as to progress and problems.	Recommendation 7, Second Session.	Complied with. Reports are being received.

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
	Dade County, in cooperation with the U.S. Geological Survey and EPA, should actively monitor the General Water-works deep well system at Snapper Creek Plant. The information obtained from the operation of this deep well injection system will be of fundamental guidance to the disposal of treated wastes in Dade County and should be made available to the conferees.	Recommendation 8, Second Session (modified below).	Study and report completed. Report shows that deep wells are a viable method for disposal of wastes in Dade County and nearby areas.
July 3, 1971	EPA and USGS shall immediately establish a monitoring program of the General Water-works deep well system at the Snapper Creek Plant. The information obtained from the operation of this deep well injection system shall be provided to the County for its guidance in developing an effluent disposal scheme for the southern part of the county as set forth in Recommendation 2.	Recommendation 5, Third Session.	EPA determined from this study by USGS that deep wells could be recommended as a method of waste disposal in Southern Dade County.

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
By August 6, 1971	Dade County shall provide plans for the immediate installation of primary treatment on the North Dade transmission line to EPA and the Florida Department of Air and Water Pollution Control. Also, the Dade County Commission shall show cause to the State and Federal agencies why it cannot renegotiate phase-out contracts on wastewater plants now providing treatment to continue such treatment at no additional cost to the user until the Northern Regional Treatment Plant is operation. No future phase-out contracts shall be negotiated by the County without prior approval of the conferees.	Recommendation 11, Third Session.	On July 21, 1972, the Metropolitan Dade County Water and Sewer Authority proposed to install primary treatment at the North Dade Treatment Plant, provided that EPA commented on their proposal to phase out existing municipal treatment plants at Myrtle Grove and Carol City. EPA and the conferees approved the proposals which included renegotiation of contracts. The County received an EPA grant of $358,710 to build the primary Sewage Treatment Plant and submitted final plans and specifications to EPA. EPA disapproved the plans in December 1972 due to many inadequacies, and the County is supposedly redesigning the plans in accordance with EPA's review comments. Essentially the County has not complied with this recommendation since they did not renegotiate phase-out contracts to provide treatment until the primary Sewage Treatment Plant is built.

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
By September 1, 1971	EPA shall complete its inventory and analysis of industrial sources and report its findings to the conferees and to the Dade County Pollution Control Officer.	Recommendation 8, Third Session.	Complied with. Report presented at Progress Meeting held November 19, 1971.
By November 1, 1971	The Dade County Pollution Control Officer shall act immediately on reported violations of State and County standards and report to the conferees his progress in correcting these violations.	Recommendation 8, Third Session.	County is enforcing violations. Fifteen small Sewage Treatment Plants with advanced waste treatment were approved. All plants were brought up to or near 90% efficiency. County has taken numerous actions against industries in the area.
	The Metropolitan Dade County Commission shall present to the conferees, through the State of Florida, a completed interim plan for abatement of pollution from all waste sources in Dade County.	Recommendation 4 of First and Second Sessions and Recommendation 2 of Third Session.	Complied with. Report was published by County on June 25, 1972 and approved by EPA in March 1973. Draft of final master plan has been submitted to EPA and should be approved by July 1973.
	The technical committee shall report to the conferees its progress and future plans for developing a regional water quality management plan.	Recommendation 11 of First and Second Sessions and Recommendation 9 of Third Session.	Complied with. Report presented at Progress Meeting held November 19, 1971

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
	All wastes from vessels used as domiciles or business establishments shall be discharged to onshore facilities. The County shall present to the conferees a plan for meeting this requirement.	Recommendation 6, Third Session.	County proposed an ordinance requiring people who live aboard boats to dispose wastes onshore. However, when EPA published regulations implementing Section 312 of FWPCA Amendments of 1972, which essentially preempted local authority and deferred application of the requirements for at least two years, the County did not act on the proposed ordinance.
By July 1, 1972	EPA shall conduct studies of existing ocean outfalls and of the coastal zone in order to develop and recommend detailed ocean disposal criteria. Preliminary criteria shall be reported to the conferees.	Recommendation 10, Third Session.	Complied with. Report was presented March 19, 1973 and was included in the final Environmental Impact Statement on Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida.
By January 1, 1973	All waste discharges into the inland canal system shall cease.	Recommendation 5 of First and Second Sessions, and Recommendation 3 of Third Session.	Delayed. The situation will not be fully resolved until the master plan is carroed pit/ This is expected by July 1, 1977 for North and Central Dade and by July 1978 for South Dade.
	Additional waste discharges to lower Biscayne Bay, including the Biscayne National Monument, and its tributaries shall be prohibited. This same prohibition shall apply to discharges to canals in Dade County which drain to the Everglades National Park. Removal of existing municipal and industrial waste discharges from these waters shall be accomplished as rapidly as possible.	Recommendation 8 of First and Second Sessions and Recommendation 5 of Third Session.	All sources, except City of Homestead, have approved County's present master plan, which calls for one treatment plant to treat all wastes and discharge the treated effluent to groundwaters. Homestead wants to recycle its wastes. EPA rejected Homestead's plan to treat its wastes independent of the master plan.

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
By June 1, 1974	A regional collection and treatment system to serve all waste sources in Dade County shall be in operation. This system shall provide a secondary treatment and disinfection with a biochemical oxygen demand and suspended solids removal efficiency of not less than 90 per cent, and shall provide for discharge of such treated effluent to the ocean at the edge of the Gulf Stream, except where alternative disposal of such effluent may be acceptable as discussed in Recommendation 2.	Recommendation 6 of First and Second Sessions and Recommendation 1 of Third Session.	Delayed. Regional collection and treatment system is not expected to be completed before July 1977 for North and Central Dade and July 1978 for South Dade. In addition, a fourth Sewage Treatment Plant is now scheduled for West Dade County with a scheduled completion date of 1985.
	Dade County shall enforce the existing regulations concerning restrictions on septic tanks until the study referred to in Conclusion 5 has been completed and new regulations are promulgated.	Recommendation 4, Third Session.	County passed an ordinance restricting use of septic tank to lots of 15,000 sq. ft. or larger. Package plants must install tertiary treatment unless discharging to deep well or ocean outfall in which cases secondary treatment is acceptable. Ordinance requires that septic tanks be abandoned when sewers become available as specified in approved master plan. As a result of this recommendation, Dade County petitioned USGS to conduct a study of the effect of septic tanks on groundwater quality. Quarterly reports of this 3-year study are issued by USGS. Preliminary USGS conclusion indicates the effect on groundwater quality is shown in the first 30 feet of depth below ground surface.

DUE DATES	TO BE ACCOMPLISHED	BASIS	REMARKS OR STATUS OF PAST DUE ACTIONS
			EPA believes this, together with information obtained in preparing the final environmental impact statement Ocean Outfall and Other Methods of Treated Wastewater Disposal in Southeast Florida, is sufficient evidence to support controls on the use of septic tanks in built-up areas.
	Until such time as the minor wastewater treatment plants in Dade County are connected to an acceptable regional collection and treatment system, they shall meet the eight specified requirements. The Dade County Pollution Control Officer shall continue to monitor the operation of these plants and enforce these requirements as necessary.	Recommendation 7, Third Session.	Complied with. County is monitoring operation of minor treatment plants and enforcing its requirements. County imposed building ban on sewer connections for problems associated with overloading and poor operation of treatment plants.
	The City of Homestead should instruct its engineers to prepare feasibility studies on disposal of treated wastes to the surface through deep well injection. Other alternatives should also be considered with the Florida Department of Air and Water Pollution Control.	Recommendation 8, Second Session.	Complied with. City will continue studies.

QUESTION NUMBER 4

(a) Following is Table A which is the listing of the 106 applicants as presented in the FY 1972 Florida Department of Pollution Control Plan.

(b) The State of Florida certified a total of fifty-three 1972 projects to EPA as listed in the revised priority list of May 15. (See Table B-1.) Of this total, 41 were made grant offers which obligated $55,502,460 (See Table B-2). Increases were made to 34 other projects (See Table B-3) obligating $9,631,990, which obligated the total allocation of $65,134,450.

The remaining 12 projects originally certified to EPA by the State of Florida were either returned or held at the request of the State for Section 206 funding. An explanation of the action taken on each of these applications follows.

Clearwater C120405 -

The Interim Water Quality Management Plan as submitted on October 11, 1972 in support of the application could not be approved by EPA. The plan was reviewed and the formal evaluation was submitted to the State on October 18, 1972. The major deficiencies were:

(a) Applicability of the provisions of the Wilson-Grizzle Bill was unclear.

(b) The plan did not demonstrate that a cost effectiveness scheme for the area had been formulated.

Apopka C120306 -

This application was returned to the State on December 6, 1972 because the planning requirements were not satisfied for this project. The following inadequacies were cited in a letter to the State on November 20, 1972:

(a) Inadequate spray irrigation design for protection of groundwater.

(b) Schedule for connection of point sources to the Regional System.

(c) Excessive design capacity not justified.

(d) Interim plan indicated that this plant was of a temporary or interim nature.

Pompano Beach C120368 -

This application was returned December 13, 1972 because the project was not in compliance with the Florida Department of Pollution Control Board's orders. The requested work would have increased the flow to Pompano's raw outfall.

Stuart C120324 -

This project was returned to the State December 11, 1972 because the planning requirements were not satisfied. The major points not addressed were:

(a) An expansion of the Stuart plant to advanced waste treatment or relocation of the outfall.

(b) The efforts being made to locate and control the nutrient input to the St. Lucie Estuary.

(c) An investigation of the alternative of establishing a regional water quality management system.

The city was reluctant to serve any area outside the city limits

The A-95 review comments were never received from the State.

Sarasota C120412 -

The application was returned to the State on November 28, 1972 because the following items were never received:

(a) Interim Water Quality Management Plan

(b) Environmental Assessment

(c) Project Map and Cost Estimates

(d) State Clearinghouse Comments

(e) Contract between City and County

Brooksville C120379 -

The city of Brooksville withdrew its application on August 11, 1972 and requested the work as an increase to an existing project. This increase was made to project C120287 from FY-72 funds.

Waldo C120364 -

The city of Waldo's application was returned on November 28, 1972 because of lack of response by the city to requests for the following supporting data:

(a) Proof of Applicant's funds to proceed with the project

(b) Project map

(c) Cost estimates

(d) Compliance Report (Form T-128)

Alachua C120363 -

The city of Alachua's application was returned November 28, 1972 because of lack of response by the city to request for the following supporting data:

(a) Cost estimates and project map

(b) Design data for treatment system

(c) A-95 Clearinghouse comments

Also the planning requirements were not satisfied. No Interim Water Quality Management Plan had been submitted by November 11, 1972.

Longwood C120366 -

The cities of Altamonte Springs and Longwood requested individual wastewater treatment plants. After analysis of the service areas by EPA's Planning Section, it was decided that a regional plant would be constructed instead of individual plants. Economic studies demonstrated that the site of the existing Altamonte Springs Wastewater Treatment Plant would be the best location of the Regional Wastewater Treatment Plant. Because of this decision, the Longwood and Altamonte Springs applications were combined into one application under the city of Altamonte Springs.

Atlantic Beach C120270 -

This project was under construction and the State decided that it would be eligible for Section 206 money; therefore, the State requested that this project be held for 206 money.

Neptune Beach C120326 -

This project was under construction and the State decided that it would be eligible for Section 206 money; therefore, the State requested that this project be held for 206 money.

Port St. Joe C120318 -

This project was under construction and the State decided that it would be eligible for Section 206 money; therefore, the State requested that this project be held for 206 money.

(c) To reduce the time required to process a grant, EPA, in conjunction with FDPC and designated regional planning councils, held several regional meetings for the purposes of explaining 18 CFR 601 planning. These meetings were held at Tampa, Tallahassee, and Orlando. Related meetings were conducted at Palm Beach and Miami.

To speed up the grant process, in the future incomplete applications will no longer be accepted. Incomplete applications were accepted in FY-72 and delays resulted in communicating the data needed and returning it.

Pre-application meetings were held with all the FY-73 applicants who are expected to be funded from PL 92-500 allotments

from FY-73 based on 40CFR35. The expected promulgation of the use-charge and capital cost recovery regulations will necessitate another meeting. Benefits are being realized with impact statements having been prepared on three projects prior to submission of the FY-73 applications and for two other projects expected to be funded in either FY-74 or FY-75.

The following general meetings have been held to communicate the regulations and requirements of the new water law (PL 92-500) to the State or consulting engineers.

(a) A meeting was held to review the new regulations in Atlanta on March 12, 1973, with State Officials.

(b) Meeting with Florida Officials in Atlanta on March 28, 1973, to brief State of new requirements of law.

(c) Meeting with Florida Official on March 29 & 30, 1973, to review status of new applications.

(d) Meeting held on April 4, 1973, in Tampa to discuss the new regulations with Consulting Engineers, City Officials and State Officials.

(e) Meeting held in Atlanta with Florida Consulting Engineers on April 10 & 11, 1973, to discuss infiltration technology and new draft infiltrations regulations.

(f) Meeting with Florida consulting engineers was held in Atlanta May 8, 9 and 10, 1973, to discuss the new regulations as well

as AWT Technology.

(g) Meeting with Florida officials was held on May 16, 1973, to discuss the Needs Survey requirement of the law.

PRIORITY RECOMMENDATIONS: 1971-72

Priority No.	WPC-Fla-No.	Applicant	Priority Points	Grant ($) Requested	Cumulative($) Sub-Total
1	399	Orlando	59	3,355,500	3,355,500
2	395	St. James City	59	330,739	3,686,239
3	393	Bokeelia	59	329,441	4,015,680
4	389	Matlacha - Pine Isl.	59	464,515	4,480,195
5	387	Sanibel Isl.	59	436,271	4,916,466
6	392	Ft. Myers Beach	58	1,679,784	6,596,250
7	394	Captiva Isl.	57	338,025	6,934,275
8	379	Brooksville	57	31,534	6,965,809
9	375	N. Dade Co.	57	35,363,000	42,328,809
10	376	Central Dade Co.	57	2,967,000	45,295,809
11	347	Englewood	57	991,110	46,286,919
12	380	Hernando Co.	57	291,720	46,578,639
13	413	Sarasota Co.	56	2,182,000	48,760,639
14	412	Sarasota	56	1,526,250	50,287,164
15	364	Waldo	55	80,190	50,367,354
16	408	Palm Beach	55	1,020,525	51,387,879
17	341-R	Sunrise	55	715,000	52,102,879
18	315	Eastpoint	54	148,085	52,250,964
19	410	Lakeland	54	318,300	52,569,264
20	391	So. Ft. Myers	54	906,347	53,475,611
21	363	Alachua	53	190,630	53,666,211
22	365	Gainesville	53	1,694,715	55,360,956
23	377	So. Dade Co.	53	14,140,000	69,500,956
24	390	E. Ft. Myers	52	756,875	70,257,831

PRIORITY RECOMMENDATIONS: 1971-72

Priority No.	WPC-Fla-No.	Applicant	Priority Points	Grant ($) Requested	Cumulative($) Sub-Total
25	382	Tampa	52	36,901,000	107,158,831
26	354	N.W. Hillsborough	52	5,581,474	112,740,350
27	314	Orange Co. N.W. & S.W.	51	2,282,500	115,022,805
28	239	Avon Park	51	291,100	115,313,905
29	290	Miami-San Marco	51	478,500	115,792,405
30	306	Apopka	51	291,500	116,083,905
31	370	Ft. Lauderdale	51	14,366,000	130,449,905
32	373	Miami-Virginia Key	51	5,759,600	136,290,503
33	406	Delray Beach	51	2,261,000	138,470,505
34	388	No. Ft. Myers	50	1,089,613	139,560,118
35	407	Loxahatchee	49	3,728,930	143,289,048
36	286	Longboat Key	49	1,676,400	144,965,448
37	371	Homestead	49	2,365,000	147,330,448
38	360	Miami-LeJeune	49	524,700	145,490,148
39	374	Kinlock Park, P.S.	49	117,810	145,607,958
40	312	Port Richey	49	608,300	146,216,258
41	301	St. Marks	48	78,650	146,294,908
42	359	Miami-Liberty	47	316,250	146,611,158
43	372	Sweetwater	47	121,000	146,732,158
44	362	Collier Co. "A"	47	951,400	147,683,558
45	235	Jennings	47	33,613	147,717,171
46	419	Tallahassee	46	1,706,034	149,423,205
47	325	Hilliard	46	126,968	149,550,173
48	334	Pembroke Pines	45	108,900	149,659,073

PRIORITY RECOMMENDATIONS: 1971-72

Priority No.	WPC-Fla-No.	Applicant	Priority Points	Grant ($) Requested	Cumulative($) Sub-Total
49	369	Hollywood	45	4,281,750	153,940,823
50	335	Miramar	45	435,188	154,376,011
51	342	Collier Co. "B"	45	148,500	154,524,511
52	378	LaBelle	45	172,000	154,696,571
53	398	Winter Garden	45	182,435	154,878,946
54	193	Bushnell	45	86,350	154,965,296
55	385	Groveland	45	307,890	155,273,186
56	318-R	Port St. Joe	44	3,214,750	158,487,936
57	352	Wauchula	44	110,000	158,597,936
58	351	Ft. Meade	44	271,700	158,869,636
59	344	Santa Rosa Isl.	44	408,000	159,277,636
60	313	Wewahitchka	44	164,775	159,442,411
61	300	Freeport	44	63,104	159,505,515
62	304	Auburndale	44	158,125	159,663,640
63	350	Cedar Key	43	93,952	159,757,592
64	340	Newberry	43	99,000	159,856,592
65	266	Longwood	43	233,000	160,089,592
66	272-R	Fernandina Beach	42	226,600	160,316,192
67	276	Pinellas Park	41	702,987	161,019,179
68	403	Pinellas Co.	41	553,135	161,572,314
69	404	Pinellas Co. Boca Ciega	41	196,900	161,769,214
70	402	N. Reddington Beach	41	191,950	161,961,164
71	324	Stuart	41	326,205	162,287,369
72	383	Vero Bch.	41	1,969,000	164,256,369

PRIORITY RECOMMENDATIONS: 1971-72

Priority No.	WPC-Fla-No.	Applicant	Priority Points	Grant ($) Requested	Cumulative($) Sub-Total
73	396	Ocala	41	113,700	164,370,069
74	356	N. Miami Beach	41	1,897,500	166,267,569
75	339	Lake Wales	40	225,647	166,493,216
76	319	Beacon Hills	40	149,072	166,642,288
77	420	Macclenny	40	189,421	166,831,709
78	353	Milton	40	765,105	167,596,814
79	293	St. Augustine	39	451,000	168,047,814
80	400	Ocoee	39	975,150	169,022,964
81	282	Ft. Myers	39	188,100	169,211,064
82	405	Clearwater	39	1,133,000	170,344,064
83	417	Port Orange	39	382,250	170,726,314
84	270	Atlantic Bch.	39	94,073	170,820,387
85	292-R	Maitland	38	270,000	171,090,387
86	317	White City	38	33,974	171,124,361
87	284	Ft. Walton Bch.	38	575,300	171,699,661
88	366	Panama City	38	196,000	171,895,661
89	349	Lynn Haven	38	149,050	172,044,711
90	415	Edgewater	37	27,500	172,072,211
91	418	Oakland Park	37	62,500	172,134,711
92	320	Oak Grove	36	34,620	172,169,313
93	367	Panama City Bch.	36	212,000	172,381,331
94	368	Pompano Bch.	35	363,300	172,744,631
95	409	Pahokee	35	302,500	173,047,131
96	244	Cocoa	35	898,081	173,945,212

PRIORITY RECOMMENDATIONS: 1971-72

Priority No.	WPC-Fla-No.	Applicant	Priority Points	Grant ($) Requested	Cumulative($) Sub-Total
97	414	Altamonte Springs	35	836,000	174,781,212
98	416	So. Daytona	35	151,000	174,932,212
99	384	Sneads	34	130,625	175,062,837
100	265	Merritt Isl.	33	1,379,400	176,442,237
101	326	Neptune Bch.	33	207,900	176,650,137
102	381	Plant City	33	137,500	176,787,637
103	386	Ft. Myers	33	682,000	177,469,637
104	397	Callahan	30	200,200	177,669,837
105	401	Okaloosa Isl.	30	150,150	177,819,987
106	237	St. Petersburg	29	198,000	178,017,987

Replaces list dated 5 April 1972 — Revised May 15, 1972

PRIORITY LIST FOR PL 660 PROJECTS

Priority No. Points	Applicant/Region	WPC-Fla-No.	Certified	33⅓ Fed. PL660 Grant	Cumulative Total
1-57	Brooksville/WC	379		18,921	18,921
2-57	Hernando Co/WC	380		175,032	193,953
3-57	Central Dade	376		1,780,200	1,974,153
4-56	Sarasota/SW	412		915,750	2,889,903
5-55	Waldo/NE	364		36,300	2,926,205
6-55	Palm Beach/SE	408		612,150	3,538,353
7-55	Sunrise/SE	341	3/1/71	429,000	3,967,353
8-55	Ocala/C	396		68,244	4,035,597
9-54	East Point/NW	315		89,676	4,125,272
10-53	Alachua/NE	363		114,180	4,239,453
11-53	Gainesville/NE	365		1,016,829	5,256,282
12-52	Tampa/WC	382		808,374	6,064,656
13,52	N.W. Hills/WC	354		743,820	6,808,476
14-51	Orange Co/NW/SW/C	314		2,920,509	9,728,985
15-51	Apopka/C	306		174,900	9,903,885
16-51	Ft. Lauderdale/SE	370		428,640	10,332,525
17-51	San Marco/SE	290		287,100	10,619,625
18;49	Loxahatchee/SE	407		2,263,208	12,882,833
19-49	Kinlock Parck/SE	374		70,686	12,953,519
20-49	Miami Le Jeune	360		524,700	
21-47	Jennings/NE	235		71,263	13,024,782
22-47	Sweetwater/SE	372		115,500	13,140,282
23-46	Tallahassee/NE	419		1,023,620	14,163,902
24-46	Hilliard/NE	325		82,104	14,246,006

Replaces list dated 5 April 1972 Revised May 15, 1972

PRIORITY LIST FOR PL 660 PROJECTS

Priority No. Points	Applicant/Region	WPC-Fla-No.	Certified	33% Fed. PL660 Grant	Cumulative Total
25-45	Pembroke Pines/NE	334		188,525	14,434,531
26-45	Hollywood/SE	369		2,569,050	17,003,581
27-44	Port St. Joe/NW	318		2,334,420	19,338,001
28-44	Wewahitchka/NW	313		75,240	19,413,241
29-44	Auburndale/WC	304	4/23/71	165,000	19,578,241
30-43	Newberry/NE	340		65,221	19,643,462
31-43	Longwood/C	266		200,640	19,844,102
32-42	Fernandina/NE	272		135,960	19,980,062
33-41	Pinellas Park/WC	276		421,792	20,401,853
34-41	Pinellas Co/WC	403		334,587	20,736,441
35-41	Pinellas Co/Boca Ciega/WC	404		141,372	20,877,813
36-41	N. Redington Bch/WC	402		112,860	20,990,673
37-41	Stuart/SE	324		208,890	21,199,563
38-41	Vero Beach/SE	383		1,181,400	22,380,963
39-40	Macclenny/NE	420		113,653	22,494,616
40-39	St. Augustine/NC	293		165,000	22,659,616
41-39	Clearwater	405		679,800	23,339,416
42-39	Port Orange/C	417		229,350	23,568,766
43-39	Atlantic Bch/NE	270	8/19/71	56,444	23,625,210
44-38	Maitland/C	292	9/21/70	203,280	23,828,490
45-38	Panama City/NW	366		117,810	23,946,300
46-38	Lynn Haven	349		126,720	24,073,020
47-37	Edgewater/C	415		16,500	24,089,520
48-35	Pompano Beach	368		217,998	24,307,518

Replaces list dated 5 April 1972 Revised May 15, 1972

PRIORITY LIST FOR PL 660 PROJECTS

Priority # Points	Applicant/Region	WPC-Fla-No.	Certified	33% Fed. PL660 Grant	Cumulative Total
49-35	Altamonte/C	414		501,600	24,809,118
50-35	S. Daytona/C	416		90,750	24,899,868
51-33	Neptune Beach/NE	326		121,110	25,020,978
52-33	Plant City/WC	381		637,494	25,658,472
53-30	Okaloosa Isl/NW	401		107,250	25,765,722

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FY 1972 WITHDRAWALS

PRIORITY NO.	APPLICANT/REGION	WPC-FLA-NO.	WITHDRAWAL NOTICE Letter	Verbal
	Orlando/C	399	*	
	St. James City/S W	395	*	
	Bokeelia/SW	393	*	
	Matlacha-Pine Isl/SW	389	*	
	Sanibel Isl/SW	387	*	
	Ft. Myers Beach/SW	392	*	
	Captiva Isl/SW	394	*	
	N. Dade County/SE	375	*	
	Englewood/SW	347-		
	Sarasota Co/SW	413	*	
	Lakeland/WC	410	*	
	S. Ft. Myers/SW	391	*	
	S. Dade Co/SE	377	*	
	E. Ft. Myers/SW	390	*	
	Avon Park/SW	239	*	
	Miami-Virginia Key/SE	373	*	
	Delray Beach/SE	406	*	
	N. Ft. Myers/SW	388	*	
	Longboat Key/SW	286	*	
	Homestead/SE	371	*	
	Miami Liberty	359	*	
	Port Richey/WC	312	*	
	St. Marks/NE	301	*	
	Cedar Key/NE	350	*	

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FY 1972 WITHDRAWALS

PRIORITY NO.	APPLICANT/REGION	WPC-FLA-NO.	WITHDRAWAL NOTICE Letter	Verbal
	Collier Co. "A"/SW	362	*	
	Miramar/SE	335	*	
	Collier Co. "B"/SW	342	*	
	Labelle/SW	378	*	
	Winter Garden/C	398	*	
	Bushnell/C	193	*	
	Groveland/C	385		*
	Wauchula/WC	352	*	
	Ft. Meade/WC	351	*	
	Santa Rosa Isl/NW	344	*	
	Freeport/NW	300	*	
	N. Miami Beach/SE	356	*	
	Lake Wales/WC	339	*	
	Beacon Hills/NW	319	*	
	Milton	353	*	
	Ocoee/C	400	*	
	White City	317	*	
	Ft. Walton Beach/NW	284	*	
	Oak Grove/NW	320		
	Oakland Park	418		
	Panama City Beach	367	*	
	Pahokee/SE	409	*	
	[illegible]/C	244	*	
		384	*	

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FY 1972 WITHDRAWALS

I	NRITY NO.	APPLICANT/REGION	WPC-FLA-NO.	WITHDRAWAL NOTICE Letter	Verbal
		Merritt Isl/C	265		*
		Ft. Myers/SW	386	*	
		Callahan/NE	397	*	
		Ft. Myers	282	*	
		St. Petersburg	237	*	

FLORIDA

PROJECTS CERTIFIED TO BE MADE @ 75%

PROJECT NO.	PROJECT NAME	GRANT AMOUNT 75%
C120380	Hernando County	$ 254,620
376	Central Dade	1,915,200
408	Palm Beach	1,325,250
341	Sunrise	138,750
396	Ocala	90,970
365	Gainesville	5,687,170
382	Tampa	3,164,770
354	Hillsborough	3,586,500
314	Orange County	4,497,000
370	Ft. Lauderdale	776,250
290	San Marco (Miami)	368,100
374	Kinlock Park (Miami)	156,600
360	Miami, Le Jeune	229,500
235	Jennings	88,500
372	Sweetwater	296,770
419	Tallahassee	2,228,160

TABLE B-2

PROJECT NO.	PROJECT NAME	GRANT AMOUNT - 75%
C120325	Hilliard	$ 172,910
334	Pembroke Pines	195,170
369	Hollywood	11,850,000
313	Wewahitchka	177,820
304	Auburndale	906,900
340	Newberry	144,070
276	Pinellas Park	1,011,750
403	Pinellas County	713,250
404	Pinellas County (Boca Ciga)	159,220
402	N. Redington Beach	252,750
383	Vero Beach	1,545,750
420	MacClenny	216,610
293	St. Augustine	571,200
417	Port Orange	504,180
292	Maitland	447,750
366	Panama City	258,370
349	Lynn Haven	494,250
415	Edgewater	50,020

PROJECT NO.	PROJECT NAME	GRANT AMOUNT - 75%
C120414	Altamonte Springs	$ 3,402,000
416	South Daytona	174,000
315	East Point	285,750
407	Loxahatchee	4,140,000
272	Fernandina Beach	297,630
381	Plant City	2,490,000
401	Okaloosa Island	237,000
	TOTAL	$ 55,502,460

TABLE B-3

Increases Made to Florida Projects - 1972 Funds

Project Number	Project Name	Amount of Increase
C120288	S. Cross Bayou	465,860.00
C120221	Winter Haven	45,200.00
C120303	Plantation	5,580.00
C120327	Hillsborough Co. (Brandon)	13,770.00
C120358	Miami	710,369.00
C120345	Boca Raton	43,950.00
C120279	Metro Dade Co.	526,022.00
C120343	Naples	406,800.00
C120194	Gainesville	190,860.00
C120327	Brandon(Hillsborough Co.)	61,380.00
C120277	Okaloosa County	37,440.00
C120345	Boca Raton	187,050.00
C120238	Orlando	261,030.00
C120287	Clearwater	240,900.00
C120336	Sanford	51,510.00
C120322	Sebring	114,600.00
C120248	Punta Gorda	11,920.00
C120253	Brooksville	13,840.00
C120278	Tallahassee	409,630.00
C120189	Baldwin	4,830.00
C120233	Largo	4,240.00
C120201	Green Cove Springs	50,250.00
C120309	Broward County	3,385,800.00
C120177	Ormond Beach	198,960.00
C120202	Jasper	23,930.00

Project Number	Project Name	Amount of Increase
C120246	Miami Springs	99,990.00
C120287	Clearwater	82,830.00
C120288	Pinellas County	278,290.00
C120295	South Bay	22,670.00
C120298	Jacksonville	443,409.00
C120299	Bradenton	191,450.00
C120322	Dunedin	229,350.00
C120337	Manatee County	784,680.00
C120343	Naples	33,600.00
	TOTAL	9,631,990.00

QUESTION NUMBER 5

(a) In general, EPA agrees with the position of the Izaak Walton League as expressed in the Committee's letter of April 25, 1973. Waterfront development, particularly finger-fill canal development, is a major factor in the rapid growth of the State of Florida. However, to say that all canals are characterized by substandard water quality is incorrect. There are many highly variable factors which determine the water quality that can be expected in a canal or canal system. Tidal flushing, length, depth, canal configuration, and age of the canal, all must be considered. The quality and quantity of urban runoff and the existence of septic tank leachates or sewage outfalls in the area are also important.

The sequence of events leading to degraded water quality is essentially correct though somewhat incomplete. Canals in sewered developments show essentially the same conditions as canals in developments served by septic tanks. Additional sources of biodegradation and enrichment include:

- o stormwater runoff from streets and lawns
- o fertilizers and pesticides applied to lawns adjacent to canals
- o leaves, grass, hedge clippings and other debris discharged into the canals from adjacent residences
- o fuel, oil, and sanitary discharges from boats moored in or navigating the canals.

Such sources are either not subject to regulation, or, by their very nature, are impossible to control. While efforts to control all sources of degrading discharge into the canals should certainly continue, additional steps should be taken to regulate the design of canal systems so as to promote flushing and tidal exchange.

The reported isolation of gas gangrene bacteria and other pathogens from canal systems is not unexpected. Bacteria responsible for gas gangrene, tetanus, botulism, and some gastrointestinal diseases are ubiquitous. The proposition that they may thrive under the degraded water quality conditions found in the canals is not questioned. An environmental impact statement prepared by EPA Region IV for alternative waste disposal practices in southeast Florida discusses present discharges into inland canal systems and tidal waters at some length. It is concluded that current practice results in a health hazard and that even high levels of waste treatment could not insure continuous and complete destruction of infectious agents.

With the advent of a strong position by all environmental agencies to preserve coastal wetlands, developers have found it increasingly difficult to obtain Corps of Engineers' permits for the work. Consequently, there is an alarming trend for developers to dredge extensive canal networks on high ground and connect them to natural bodies of water. The Palm Coast Development is a prime example of this type of construction. In situations like this, we have required the permit applicant to furnish documented evidence that tidal flushing

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and water circulation will be sufficient to maintain water quality standards. This evidence should be in the form of hydraulic studies of mathematical models.

(b) EPA (formerly Federal Water Quality Administration) conducted an Enforcement Conference in Dade County in October 1970. The report prepared for that Conference discussed the effects of numerous waste sources on canals, coastal waters, and the ocean in and adjacent to Dade County. (See pages 18-162 in Attachment 5(b) - 1.) Findings indicated that all major canals in Dade County experienced degraded water quality and excessive populations of coliform bacteria. The report and subsequent conferences recommended complete removal of all waste discharges from the inland canal system.

Studies of canals in Broward and Palm Beach Counties by EPA and others revealed similar degraded water quality. A special study of southwest Florida conducted by EPA's predecessor agency, the Federal Water Quality Administration, entitled A Synoptic Survey of Limnological Characteristics of the Big Cypress Swamp, Florida confirmed that canals constructed in many parts of south Florida suffer water quality degradation because of pollutants from many sources. (See Attachment 5(b) - 2.) The interconnections of large canal systems, as are commonly found in the State, provide an efficient method for removing vast quantities of water within a relatively short period of time, thus effectively by-passing the natural water purification process.

EPA has conducted extensive studies in canals in southwest Florida which describe the unique features of the canal environment.

Considerable water quality data from canals which are obtained from other agencies are processed through the EPA data handling system. EPA Region IV staff review these data routinely to assess adequacy of abatement programs. A study has been designed and proposed by EPA Region IV Surveillance and Analysis Division to apply currently available mathematical model techniques to the assessment of water quality in proposed new finger-fill canal systems. Such models would form the basis for EPA review and comment on construction permits and would be a useful tool not used heretofore. (See Attachment 5(b) - 3.)

(c) The 1972 Amendments to the Federal Water Pollution Control Act preclude EPA from taking any direct enforcement action against developers whose canals create violations of water quality standards. However, during the past year there have been several Corps of Engineers' Section 10 permits issued in Florida which contain specific water quality conditions enforceable under the River and Harbor Act of 1899. These conditions will enable us to require permittees to monitor water quality in canals in a manner acceptable by this agency. In the event these monitoring data indicate unacceptable water quality conditions exist, the developer will be required to implement whatever artificial devices are necessary to maintain water quality standards. On recent and future large scale canal developments, EPA is requiring that the permittee purchase a performance bond or form an escrow account to assure that the developer is held responsible for the purchase of

bond is the ITT Palm Coast Development.

(d) See Attachment 5(d) - 1.

QUESTION NUMBER 6

(a) No.

(b) Not applicable.

(c) In order for the Palm Coast Development canal system to be acceptable to EPA, the applicant must:

(1) Prepare a contingency plan describing the facilities and the mode of operation of facilities to be employed to maintain water quality standards.

(2) Purchase a performance bond or establish an escrow account to assure that adequate funds are available to provide these facilities. In view of the detrimental impact on water quality and other natural resources, we have also recommended that the Corps prepare an environmental impact statement prior to issuance of a Section 10 permit. (See Attachment 6(c) - 1.)

(d) The Palm Coast Development has constructed a central sewage treatment system. Through our review of the environmental impact statement, EPA will request assurances from the company that the entire development will be served by sewers and a State-approved treatment facility with no effluent discharged to surface waters.

QUESTION NUMBER 7

To date, Florida has not applied for National Pollutant Discharge Elimination System permitting authority. However, on March 14, 1973, Governor Askew sent a letter to Mr. Ruckelshaus recommending several changes to the proposed NPDES permit program (see Attachment 7-1). The recommended changes were not expressed as conditions prior to Florida's acceptance of the NPDES permit program. The recommendations were as follows:

1. All existing permits should be recognized as such and grandfathered into the new system.
2. The Administrator should waive his right to review permits issued by the Florida Department of Pollution Control. Such waiver should be absolute and based upon the fact that our program is approved, that we will only grant permits under allowable standards, and that review by the Environmental Protection Agency would be redundant.
3. Public Notice requirements should be severely narrowed.
4. The requirement that the State must give notice of its intent to either issue or deny permits should be deleted.
5. Costs of permit hearings and public notices should be borne at least in part by the Federal Government.

Recommendations 1, 3 and 4 are not compatible with Sections 101(e) and 402(b) of the 1972 Amendments to the Federal Water Pollution Control

Act and are, therefore, unacceptable. Recommendation 2 is unacceptable since EPA feels that it would be inappropriate to grant a blanket waiver on its review of permits. With regard to Recommendation 5, the Federal Government will be providing part of the funds for this purpose through the State program grants under Section 106 of the Act.

EPA's response to Governor Askew summarizing these findings is included as Attachment 7-2.

QUESTION NUMBER 8

(a) For FY 1972, the Florida Department of Pollution Control received air pollution control program grant support pursuant to Section 105 of the Clean Air Act as amended, in the amount of $591,000. During FY 1973, the level of support to the Department was increased to $700,000, principally for the purchase of additional continuous air monitoring equipment as required in the EPA-approved State Implementation Plan. At this time, it is expected that the level of Federal grant support to the Department for FY 1974 will be $450,000.

(b) All portions of Florida's Air Implementation Plan were approved in the May 31, 1972, Federal Register. At the time of plan approval, all States were given until February 15, 1973, to submit individual negotiated compliance schedules for EPA approval or disapproval. Upon approval, these schedules would then become part of the official State plan. To date, no schedules have been received. However, the Florida agency is actively engaged in securing and developing compliance schedules. Hearings have been held on schedules for all significant sources (385 facilities) not currently in compliance. These hearing dates were as follows: April 6, Central Region; April 19, Northwest Region; April 27, Northeast Region; May 3 and 7, West Central Region. Final determination as to the adoption of these schedules will be made by the Board on May 15. It is anticipated that by June 1, 1973, compliance schedules for all significant air pollution sources will be submitted to EPA.

(c) The expected decrease in the level of Federal grant support to the Florida Department of Pollution Control will have some minor effect upon the State of Florida's achievement of Implementation Plan schedules and goals. However, the decrease in the level of support will primarily affect schedules for establishment of a state-wide comprehensive ambient air monitoring network which essentially involves equipment expenditures. This is not expected to have a major effect on the enforcement of the Department's air pollution control regulations throughout the State of Florida, the implementation of control strategies approved in the Implementation Plan, or the securement and monitoring of source compliance schedules for all sources not in compliance with the Department's regulations.

QUESTION NUMBER 9

To our knowledge, EPA has not terminated any program which assigns EPA employees to assist State and local air pollution control programs in carrying out the EPA-approved State Implementation Plans for achieving national ambient air quality standards.

EPA currently has two mechanisms for assigning such personnel to State or local programs receiving EPA grant support. One mechanism provides for assignees which are "Chargeable-to-Grant-Funds," that is, payment for this type of assignment is deducted from an agency's Federal share of a cash grant awarded under Section 105 of the Clean Air Act. The other mechanism provides for assignees which are "Not-Chargeable-to-Grant-Funds." Although this particular type of assignment appears to be "free," it must be noted that funds are derived from the total EPA Regional Office allocation for air program grant support. The allocation for air program grant support which is received by the EPA Regional Office is divided into two parts -- one portion to fund "Not-Chargeable-to-Grants-Funds" EPA assignees and the remainder to fund air pollution control program cash grants (including "Chargeable-to-Grant-Funds" EPA assignees).

The primary purpose of the EPA assignee program is to provide urgently needed, qualified technical manpower to State and local air pollution control programs in order to assist such programs in the performance of specific responsibilities under the EPA-approved Implementation Plans.

The program has resulted in increases in manpower available to State and local programs needed to implement their Plan responsibilities. The "Not-Chargeable-to-Grant-Funds" assignees are normally used only where local funding difficulties have precluded the use of "Chargeable-to-Grant-Funds" assignees to alleviate technical manpower shortages. The "Chargeable-to-Grant-Fund" assignees have been successful in providing needed manpower where State and local government-imposed position ceilings or low entrance-level salaries at the State or local program level have prevented programs from increasing their staff size to the level required to carry out the Implementation Plan. Our experience has shown that this assignee program has resulted in the acceleration of State and local program efforts in meeting Implementation Plan goals and schedules.

QUESTION NUMBER 10

(a) On July 1, 1972, the Solid Waste staff consisted of five (5) professionals, one (1) secretary-stenographer, and two (2) temporary clerks.

(b) On July 1, 1973, the Solid Waste staff will consist of two (2) professionals.

(c) Solid Waste Grants:

FY 1972

Grantee	Amount	Period Covered	Purpose
Florida Dept. of Pollution Control	$ 44,186	1/1/71-7/31/72	Planning
Orange County[1]	150,000	7/1/70-6/30/73	Demonstration: Landfill construction in a high water table area.

FY 1973

Florida Dept. of Pollution Control	$ 31,787	8/1/72-6/30/73	Planning
Orange County[1]	150,000	7/1/70-6/30/73	As above
Brevard County	110,200	1/1/73-12/31/73	Demonstration: County-wide solid waste disposal system.

FY 1974

Florida Dept. of Pollution Control	$ 40,000	7/1/73-6/30/74	Planning

[1]EPA's grant for this project was awarded in three installments: $200,000 in FY 1971, $150,000 in FY 1972, and $150,000 in FY 1973.

QUESTION NUMBER 11

(a) See Attachments 11(a) - 1 and 11(a) - 2.

(b) The Region does not prepare a formal quarterly enforcement report for air pollution. The current thrust in both the States' and EPA's program at present is in the development of legally enforcement compliance schedules for sources which are not now in compliance with final emission limiting regulations. Once this has been accomplished (August 15, 1973), program emphasis will shift to active enforcement of the approved compliance schedules.

Florida has held six (6) hearings on proposed air compliance schedules, and after Board approval, these will be submitted to EPA by June 1, 1973, for review and approval. Approvals/disapprovals will be published in the Federal Register by the end of June. EPA will hold a hearing for categorical regulation for disapproved schedules and publish this regulation in the Federal Register by August 15, 1973.

The Region has initiated an enforcement action against an automobile dealer in Orlando for violation of the removal/tampering provisions of the Clean Air Act as they pertain to motor vehicle emission control devices. This action was the first of its kind by EPA. A summary of this enforcement action is provided in Attachment 11(b) - 1.

QUESTION NUMBER 12

(a) The Final Judgment is attached hereto in its entirety. (See Attachment 12(a) - 1.) The major points may be summarized as follows: Paragraph IV requires that no later than five years from the date of the Final Judgment, Florida Power and Light Company shall not discharge any condenser cooling water into Biscayne Bay or Card Sound.

Immediately upon entry of the Final Judgment the company was required to control the flow rate and temperature of its discharge in the specified manner; expeditiously complete the Card Sound Canal; construct and operate a groundwater monitoring system to evaluate seepage from the cooling system; conduct joint studies as to alternative cooling methods and procedures for restoring areas environmentally affected by the discharge; and construct a cooling system intended to essentially eliminate the discharge of condenser cooling water to Biscayne Bay and Card Sound.

Paragraph V prohibits the company from discharging from the cooling system to Card Sound unless required to prevent excessive salinity in the system and then only under restrictions as to temperature, salinity, and flow rate. Discharges from the cooling system to Biscayne Bay are prohibited.

(b) Based on evaluations and inspections of the facility and receiving waters by EPA, we believe the company is currently in substantial

compliance with all those provisions of the consent decree that are within EPA's jurisdiction. The status, as of April 28, 1973, of construction of the cooling system required by paragraph V of the Final Judgment is depicted by the attached charts and graphs submitted by Florida Power and Light's consultants. (See Attachments 12(b) - 1, 12(b) - 2, and 12(b) - 3.) Although some parts of the construction are behind schedule, other portions are ahead of schedule. Construction has progressed to the extent that in February when the facility was inspected by this office and at the present time, the facility is operating in an essentially closed cycle mode. (See Attachment 12(b) - 4.) While this accomplishment is ahead of the schedule required by the Final Judgment, we are informed by the company that it might not be maintained during the critical peak demand periods this summer.

QUESTION NUMBER 13

The Oil and Hazardous Material Spill Program of Region IV is a fully manned staff function. Eleven people work full time in the prevention and response effort, with additional legal resources provided by the Enforcement Division.

In terms of response activities, Region IV maintains a 7-day, 24-hour service. Thus far in 1973, the Environmental Emergency Branch has expended 69 mandays on spill scenes. Since January 1, 1973, in inland waters alone, 1.8 million gallons of oil (212 events) and 200,000 gallons of hazardous materials (31 events) have been spilled. While 415,000 gallons, or 20 percent, have been recovered from the environment, some 403 miles of stream have been adversely affected to varying degrees. Because of this statistic, Region IV places top priority on prevention, and at this time we are staffing to implement fully the Section 311(j)(1)(c) regulations when promulgated.

Considerable laboratory analytical time is devoted to detection of spilled pollutants which cause fish kills, endanger water supplies, or otherwise damage waterways. Samples from approximately 15 spills of various description are received each month. Analytical techniques used are highly refined and are beyond the capability of most agencies. Follow-up biological studies of damaged areas are sometimes performed to determine long-term impact of spills.

Since the middle of 1971, eighty oil spill files were developed for possible enforcement action. Thirty-one of the files concerned oil spills that occured prior to the enactment of PL 92-500. Ten of these spills were referred to the Coast Guard as "knowing discharges" into navigable waters of the United States. Four (4) spills were referred to U.S. Attorneys as discharges of refuse into or affecting navigable waters in violation of the Refuse Act. The remaining files out of the 31 files had evidentary problems with proof of "knowing discharges" and/or navigable water which precluded referral to either the Coast Guard or to a U. S. Attorney.

The passage of PL 92-500, with the expansion of jurisdiction to the "waters of the United States" and the deletion of the "knowingly discharged" terminology, has resulted in a substantial increase in case referrals to the Coast Guard. In the seven months since the enactment of PL 92-500, forty-nine oil spill files have been developed for legal review and referral action. As of May 15, 1973, thirty of these spills had been referred to the Coast Guard with evidentary problems precluding the referral of only three spills. The remaining 16 files are currently undergoing legal review and/or case development. It is anticipated that all will be referred to the Coast Guard for assessment of civil penalties.

During the first Quarter of 1973, civil penalty assessments in cases referred to the Coast Guard have been in excess of $10,000. Eight cases involving failure to report spills have been referred to the U.S. Attorney. One such case has been concluded; a guilty verdict

was obtained and a fine of $500 was assessed.

Several efforts have been made to improve cooperation between EPA and the Coast Guard. During the first quarter of 1973, an EPA attorney visited three of the four Coast Guard district offices having jurisdiction in Region IV to discuss methods of improving coordination in spill matters. Subsequently, EPA held a meeting in Atlanta with representatives from all four Coast Guard districts, and later EPA and Coast Guard representatives met with representatives from the eight Region IV States to discuss methods of improving State/Federal cooperation in spill matters. Those meetings have resulted in improved coordination and cooperation between the Coast Guard district offices and EPA in enforcing the oil spill provisions of PL 92-500.

QUESTION NUMBER 14

Very few cases of pollution caused by Florida feedlots have been reported because the State has an aggressive program of identifying polluters and then insisting on remedial action. County and State pollution control personnel have worked closely with the Agricultural Extension Service to implement a comprehensive abatement program frequently utilizing a lagoon system to prevent animal wastes from contaminating water resources.

Florida feeds out from 175,000 to 200,000 beef cattle per year. One area of concentration lies in the panhandle area near Quincy, where the feeding of cattle was started as a source of manure for the shade tobacco industry. There is also a large feeding operation at Fort White and several others just south of Ocala. The Lykes Brothers operation at Brooksville feeds 40,000 head per year, making it the largest single feedlot in the State. There are four (4) feeders in Florida who feed over 5,000 head at one time, and five (5) or six (6) who feed over 1,000 head. Manure from these operations is generally collected and utilized as fertilizer in citrus groves and processed for sale.

Florida is a very large producer of beef feeder calves and ships over 650,000 head out of the State each year. There is no real concentration of these cow-calf herds, but south of Gainesville the operations generally run around 500 head, while north of

Gainesville there are 50 to 100 head in each herd. Manure from these cattle is deposited over pastures as the animal graze.

Florida has 201,000 head of milk cows on 450 dairies, with an average of 450 head per operation. There has been a tendency toward eutrophication of Lake Okeechobe, especially from the Taylor Creek drainage area, but an ongoing program of lagoon construction has, to a large extent, eliminated the contribution of dairy waste to this problem. One large dairy, T. G. Lee of Orlando, has been cited and is now constructing a lagoon with the assistance of the extension waste treatment specialist.

Other areas with high concentration of dairy cows are Hillsborough, with 30-35,000; Duval, with 30,000; Clay, with 10-15,000 (Gustafsons Dairy has 8,000 milk cows alone in this county); Highlands, with 10-15,000; and Manatee, with 10-15,000. EPA has visited a number of large dairies in Hillsborough and Manatee Counties to observe the operation of the waste treatment facilities designed by the Extension Agricultural Engineers. Visual inspection and the data furnished by Doctors Norstadt and Baldwin indicated excellent performance.

The waste treatment systems involved either dry or liquid manure handling from areas where cattle are concentrated. In dry handling, the manure is taken up and spread on adjacent pastures while liquids go through a sand filter, then to an anaerobic lagoon, followed by one or more handling lagoons. The waste from these handling lagoons is spray-irrigated or seepage-irrigated to adjacent pastures.

Liquid handling involves the hydraulic movement of all manure from areas of cattle concentration to the lagoon system. Tests to date indicate no pollution of surface or groundwaters from either type of system.

Florida's swine industry is quite small, with a total population of from 300,000 to 325,000 head. The trend is toward straight feedout operations, where pigs are bought and placed on feed, to those where the pigs are raised by the farmer and then fed out. This has been brought about by disease, and lack of quality feeder pigs. The largest operation in the State, which is in Duval County, feeds 3,500 head and operates a lagoon system similar to that used by dairy farms. This farm is following the trend toward a complete sow operation where all pigs are raised on the farm rather than bought. Suwannee and Madison Counties have the largest concentration of hogs in the State at approximately 50,000 head, while the balance of the State population is generally distributed throughout the northern and panhandle counties in units averaging between 50 to 60 brood sows.

Poultry in Florida is a large industry. Between 40 and 50 million broilers are grown and 12 million laying hens are fed each year. Turkeys are negligible, with only a few thousand grown per year.

Broilers, which are concentrated in the Live Oak-Madison area, present little or no population problems. However, laying hens maintained in cages can cause both odor and fly problems where handled dry. The Poultry Extension Service has reduced complaints from this

source to a minimum by conducting manure management schools for concerned growers. The few cage operations where manure is hydraulically removed have caused no problems since they use a lagoon system and spray irrigation system for treatment of the waste. Laying hens are generally found in central and western Florida, with concentrations in Hernando, Hillsborough, and Pasco Counties.

Feedlots will be permitted under the National Pollutant Discharge Elimination System Program. (See 402 of the Florida Department of Pollution Control Act Amendments.) Only large operations will come under these regulations, however.

The projected EPA National Pollutant Discharge Elimination System cut off figures for agriculture are:

1,000 Head of Beef Cattle
700 Dairy Cows and Heifers
2,500 Head of Swine (over 55 lbs.)
10,000 Sheep
55,000 Turkeys
5,000 Ducks
100,000 Laying Hens (constant flow watering)
100,000 Broilers (constant flow watering)
30,000 Cage Layers (liquid man handling)

Feeding operations with numbers less than these will not be required to apply for a National Pollutant Discharge Elimination System permit. The number of farms in Florida which will be required to file are anticipated to be as follows:

10 Beef Cattle

100 Dairy Farms

5 Swine

3 Cage Layers

In addition, the Florida Department of Pollution Control Act Amendments also provides that the Regional Administrator can require any agricultural operation to apply for a permit if he deems it necessary.

QUESTION NUMBER 15

(a) Region IV has prepared an environmental impact statement entitled Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida, which examines the impact of treated wastewater disposal methods on man and his environment in that area.

The environmental impact statement indicates that the disposal of wastewater to the ocean via outfalls is a viable method of disposal for southern Florida. Conditions under which the ocean outfall method of disposal may be used are listed on page 9 of the attached copy of the final statement (See Attachment 3 - 5). Issuance or approval of National Pollutant Discharge Elimination System permits would be evaluated based on these conditions.

Negotiations are currently under way with the Florida Power and Light Company and Florida Power Corporation to determine the effluent limits on their respective plants at Hutchinson Island (under construction) and Crystal River, both of which discharge to the ocean.

(b) Table C is not submitted because EPA Region IV has not received any applications for Ocean Dumping Permits as required under the Marine Protection, Research and Sanctuaries Act of 1972.

On March 14, 1973, Region IV issued a news release announcing the requirements of this law and urging all persons or firms presently dumping wastes in the ocean or proposing to do so to apply for an Ocean Dumping Permit on or before April 23, 1973.

A copy of the news release is attached (See Attachment 15(b) - 1).

On March 27, 1973, identical letters were sent to all State and Federal agencies with jurisdiction over or knowledge of ocean dumping activities. A copy of this letter and a list of recipients are attached (See Attachment 15(b) - 2). Written and verbal responses indicate that there is no municipal or industrial ocean dumping activity in Region IV at the present time (See Attachment 15(b) - 3). To date, no permit form pursuant to Title I of Public Law 92-532 has been promulgated and made available to the Region.

QUESTION NUMBER 16

Neither EPA, State nor local agencies have accomplished studies aimed specifically at this problem. However, all agencies have, in the course of other studies, concluded that vessel pollution has not been a major problem in the canals and harbors compared to other discharges. However, as other sources come under control, the significance of vessel pollution as part of the total pollution problem is expected to become more apparent.

The area of greatest concern is the discharge from live-aboard watercraft, particularly when they are concentrated in marinas and dead-end canals. Presently these discharges, which are sometimes macerated and chlorinated prior to discharge but more often are untreated, enter receiving waters directly.

QUESTION NUMBER 17

(a)(1) Water Abatement:

"Real Property Owned by the Federal Government in the State of Florida", an inventory prepared for EPA in 1971 by the General Services Administration, lists a total of 288 Federal installations operated by 24 agencies. This inventory does not include facilities with a total floor space of less than 1500 square feet, does not include facilities leased by the government, and does not include any information with respect to wastewater disposal. "Wastewater Disposal Practices at Federal Installations as of December 31, 1960", prepared by GSA for the Public Health Service, is the most recent inventory available on waste disposal and lists a total of 348 installations. However, changes in operation, closing of installations, opening of new installations, and provision of additional treatment facilities have reduced the value of this information. (Copies of these inventories are included in Attachment 17(a) - 1.)

Based on a review of the above inventories plus project listings, inspection reports and other available information, EPA has complied a list of 254 installations which are considered potential sources of surface discharges of sanitary and/or industrial wastes. A copy of this listing and explanation of coded information are included in Attachment 17(a) - 1. This is a listing of installations which will be requested to submit information concerning waste dis-

charges either in the form of permit applications or negative responses. Each Federal agency will be requested to review and update this list to reflect new installations, transfer of property, and installation closings.

As noted above, of over 300 Federal installations in the State of Florida, 254 have been identified by EPA as producing or potentially producing discharges of sanitary and/or industrial wastes to surface waters. These installations are operated by 16 agencies. Table I presents a listing by agency of the number of installations; the number identified as potentially producing surface discharges; the number of major and minor installations; and a summary compliance assessment.

Installations having surface discharges were classified as major on the basis of one or more of the following criteria:

1. The installation is located in an EPA priority water basin (Dade County or Pensacola Bay).

2. The installation is located in an Enforcement Conference Area (Dade County, Biscayne Bay or Escambia River).

3. The installation has been formally cited by a Federal, State or local pollution control agency for violation of applicable effluent limitations or water quality standards.

4. The installation is considered to be a significant source of pollution in a non-priority area.

5. The size and/or complexity of the installation and its operations require a significant commitment of manpower and financial resources for pollution control.

Detailed summaries by agency and major installations are included in Attachment 17(a) - 2. Supporting information is included in Attachments 17(a) - 3 and 17(a) - 4.

Since 1968, Federal installations in Florida have received budget allocations totaling $23,221,200 for construction, repair or modernization of pollution abatement facilities. Sixty-four projects have been completed at a total cost of $8,166,000; there are 181 active projects with a total cost of $14,055,200. Five projects with a total cost of $692,000 are proposed for submission in the FY 1975 or later budget. Submission of additional projects for the FY 1975 budget is anticipated. A listing by agency of the number and cost of major and minor completed, active, and proposed projects is presented in Table II. Complete lists of completed and active projects are included in Attachment 17(a) - 3 and project summaries for major installations are included in Attachment 17(a) - 4.

In November 1972, EPA informed the Department of Defense of those installations which require submission of additional budget requests for pollution abatement projects. These needs were based on the anticipated requirements for permits which will be issued under the National Pollutant Discharge Elimination System (NPDES) which was established by the Federal Water Pollution Control Act. These anticipated requirements are discussed in Attachment 17(a) - 5. Specific needs were identified for 4 of the 12 major DOD installations (copies of needs listings for major installations are included in Attachment 17(a) - 4). Those installations (including minor) for which no

specific needs were identified were requested to review their waste disposal practices to insure that adequate treatment is provided for all discharges. Needs for additional projects will be reevaluated after review of NPDES permit applications and the FY 1975 budget submissions.

All permit applications will be processed as rapidly as possible. Priority will be given to applications from installations located in priority areas and then to other major installations. EPA will advise major installations of tentative permit conditions and additional treatment requirements by August 31, 1973.

A summary of the compliance status of major and minor installations by agency is presented in Table I.

It should be noted that the compliance assessments were based on the provision of the best practicable treatment for all waste discharges, including minor sources of industrial wastes such as cooling tower blowdown, washrack wastes, and others as discussed in the attached "Guidelines for Waste Treatment at Federal Installations" (Attachment 17(a) - 5). An assessment other than "In Compliance" does not indicate that major problems exist or that significant violations of water quality standards are occurring.

With the exception of those installations which are awaiting the availability of municipal or regional collection and treatment systems, all installations have completed or are actively pursuing projects to provide treatment for major sources of sanitary and industrial wastes which meet or exceed all requirements.

It is our view that all Federal installations in Florida are progressing toward providing adequate waste treatment in a manner consistent with or better than that of surrounding municipalities or industries.

The following assessment categories have been used in Table I:

1. In Compliance:

All discharges from the installation are in compliance with applicable effluent limitations and/or water quality standards. No needs for additional pollution abatement projects have been identified.

2. Progress Satisfactory:

The installation has active or proposed abatement projects to bring all discharges into compliance and no needs for additional projects have been identified.

3. Additional Projects Required:

Existing active or proposed projects (if any) are not adequate to bring all discharges into compliance and specific needs for additional pollution abatement projects have been identified.

Compliance assessments were made subject to the following assumption and conditions:

1. Assessment of major installations was based on information obtained through on-site inspection, review of existing abatement projects, and all other available information.

2. In the case of minor installations for which no on-site inspections have been made and for which no other information is available,

those installations which have no existing projects are assumed to be in compliance; those which have existing abatement projects were counted as making satisfactory progress.

3. EPA will reevaluate the compliance assessment of each installation based on information obtained under the NPDES permit program.

The basis for the compliance assessment of each major installation is included in Attachment 17(a) - 2.

TABLE I

AGENCY/BUREAU	1971 REAL PROPERTY INVENTORY TOTAL NO.	NO. OF POTENTIAL DISCHARGERS		MAJOR			MINOR			
		MAJOR	MINOR	IN COMP.	SAT. PROG.	ADD. NEEDS	IN COMP.	SAT. PROG.	ADD. NEEDS	NOT DETERMINED
Department of Agriculture										
Agric. Research Service	15		16				16			
Forest Service	2		2				1	1		
Soil Conservation Service	1		1				1			
Department of Interior										
Geological Survey	1						1			
Bureau of Indian Affairs	2		5							5
National Park Service	5		6					6		
Fish and Wildlife Service	14		25					6		19
Department of Justice										
Federal Prison Industries	1		1				1			
Bureau of Prisons	1		1				1			
Department of the Navy	48	5	14		4	1		8		6
Post Office Department	36									
Department of the Army	35		13				8		4	1
Federal Communications Comm.	1									
Veterans Administration	4		4				4			
General Services Administration	25									
Department of the Air Force	33	7	71		4	3	2	1		68
Tennessee Valley Authority	1		1				1			

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TABLE I CON'T.

AGENCY/BUREAU	1971 REAL PROPERTY INVENTORY TOTAL NO.	NO. OF POTENTIAL DISCHARGERS								
		MAJOR	MINOR	IN COMP.	SAT. PROG.	ADD. NEEDS	IN COMP.	SAT. PROG.	ADD. NEEDS	NOT DETERMINED
Department of Transportation										
U.S. Coast Guard	30	1	62			1	62			
Federal Aviation Adminis.	14									
Dept. of Health, Ed. & Welfare										
Office of Education	4									
Food & Drug Administration	1									
Nat. Aero. & Space Adminis.	3	1	2		1		2			
Atomic Energy Commission	2	1			1					
Corps of Engineers (Civil)	9		15							15
TOTAL	288	15	239	0	10	5	99	22	4	114

TABLE II

AGENCY/BUREAU	COMPLETED NO.	COMPLETED COST(M$)	ACTIVE NO.	ACTIVE COST(M$)	PROPOSED NO.	PROPOSED COST(M$)	TOTAL NO.	TOTAL COST(MS)
Department of Agriculture								
Agric. Research Service								
Forest Service			4	1,141			4	1,141
Soil Conservation Service								
Department of Interior								
Geological Survey								
Bureau of Indian Affairs								
National Park Service			7	1,075			7	1,075
Fish & Wildlife Service	4	103	5	158			9	261
Department of Justice								
Federal Prison Industries								
Bureau of Prisons								
Department of the Navy	11	5,174	91	7,055	4	632	106	12,861
Post Office Department								
Department of the Army			3	270			3	270
Federal Communications Comm								
Veterans Administration								
General Services Admin.								
Department of the Air Force	27	1,928	18	3,934	1	60	46	5,922
Tennessee Valley Authority								

TABLE II CON'T.

AGENCY/BUREAU	COMPLETED NO.	COMPLETED COST(M$)	ACTIVE NO.	ACTIVE COST(M$)	PROPOSED NO.	PROPOSED COST(M$)	TOTAL NO.	TOTAL COST(M$)
Department of Transportation								
U.S. Coast Guard	3	44	31	482.2			34	526.2
Federal Aviation Admin.			4	59.8			4	59.8
Dept. of Health, Ed. & Welfare								
Office of Education								
Food & Drug Admin.								
Nat. Aero. & Space Admin.	19	917	6	311			25	1,228
Atomic Energy Commission			1	127			1	127
Corps of Engineers (Civil)			11	442.2			11	442.2
TOTAL	64	8,166	181	15,055.2	5	692	250	23,913.2

TABLE III

STATUS OF PERMIT APPLICATIONS FOR
FEDERAL INSTALLATIONS IN FLORIDA

Installation	Permit Number	Status	Installation Advised of Additional Project Needs
Air Force			
Cape Kennedy AFS	074-0YL-2-000166	Conditions written, add. applications requested.	Yes
Cape Kennedy AFS Marina	074-0YL-2-000694	Conditions written, consolidation required.	Not Determined
McCoy AFB	074-0YL-2-000628	Additional data requested.	Not Determined
Patrick AFB	074-0YL-2-000185	Additional applications requested.	Yes
Lynn Havan AF POL	074-0YM-2-000614	Conditions written.	None Known
Navy			
*NAS Cecil Field	074-0YL-2-000147	Conditions written.	Yes
*NAS Jacksonville	074-0YL-2-000148	Conditions written.	None Known
*NAS Key West	074-0YL-2-000262	Conditions written.	None Known
*NAS Whiting Field	074-0YM-3-000231	Conditions written.	None Known
Naval Ship Res. & Development	074-0YM-3-000222	Additional data received, pending final review.	Not Determined
Naval Station Mayport	074-0YL-2-000191	Conditions written, consolidation required.	Yes
Naval Station Mayport (Bldg. 1421)	074-0YL-2-000145	Additional data requested, consolidation required.	Yes
Boiler Plant	074-0YL-2-000146	Additional data requested, consolidation required.	Yes
Naval Station Fla. Bay (Key West)	074-0YL-2-000264	Additional data requested.	None Known
*N.S. Hospital, Key West	074-0YL-2-000263	Conditions written.	None Known
N.S. Main Ship Channel (Key West)	074-0YL-2-000247	Additional data requested.	None Known
*N.S. Man-of-War Harbor (Key West)	074-0YL-2-000261	Conditions written.	None Known
PWC Pensacola	074-0YM-3-000108	Pending review of consolidated applications.	Yes
Nav. Sta. Annex, Key West	074-0YL-2-4-00023	No action.	None Known

TABLE III CON'T.

Installation	Permit Number	Status	Installation Advised of Additional Project Needs
EPA			
Gulf Coast Water Lab.	074-OYM-3-000824	No action.	Not Determined
*Lower Florida Estuary	074-OYL-2-720258	Conditions written.	Not Determined
AEC			
Pinallas Plant	074-OYL-2-000103	No action pending policy decision.	Not Determined

*Technical review has been completed and special conditions written, awaiting review by Permits Branch

The following installations have not submitted RAPP applications and have been requested to submit NPDES applications:

Homestead Air Force Base
McDill Air Force Base, Tampa
Eglin Air Force Base and Auxiliary Landing Fields
John F. Kennedy Space Center
Coast Guard Installations

(2) Air Abatement:

The following summary is based on attached project information available to EPA and the Florida Pollution Control Department.

It is our opinion that Federal facilities in the State of Florida contribute a very small amount to the overall air pollution problem. The Departments of the Navy and the Air Force contribute the largest amounts of air pollution that are emitted from Federal facilities in the State. The most frequently observed types of sources or potential sources found at these military installations are:

1. classified documents incinerators
2. pathological waste incinerators
3. stationary fuel burning sources
4. jet engine test cells
5. open burning of solid waste
6. fuel storage tanks
7. paint spray booths
8. aircraft
9. other military vehicles

Table IV presents a summary, by agency, of the number of installations and the cost of completed, active, and proposed air pollution abatement projects. This table indicates that the total number of projects to date is 54, at a cost of $10,587,600.00. Detailed project listings are included in Attachment 17(a) - 6.

The Clean Air Act requires that all Federal installations

TABLE IV

AGENCY/ BUREAU	# MAJOR FACILITIES	# MINOR FACILITIES	C.S. REC'D BY EPA (5/14/73)	PROJECTS COMPLETED NO	COMPLETED COST ($1000.00)	ACTIVE NO	ACTIVE COST ($1000.00)	PROPOSED NO	PROPOSED COST
Navy	0	48	0	11	188.0	8	2,648.0	10	6205.0
Air Force	0	33	0	3	432.0	10	784.0	0	0
Post Office	0	36	0	0	0	0	0	0	0
Army	0	35	0	0	0	0	0	0	0
Transportation	0	44	0	2	0*	4	61.6	0	0
Interior	0	22	0	0	0	2	47.0	0	0
G.S.A.	0	25	0	0	0	0	0	0	0
C. of E.	0	9	0	0	0	0	0	0	0
V.A.	0	4	0	1	37.0	1	37.0	0	0
Agriculture	0	18	0	0	0	1	113.0	0	0
N.A.S.A.	0	3	0	0	0	0	0	0	0
A.E.C.	0	2	0	0	0	0	0	0	0
H.E.W.	0	5	0	0	0	0	0	0	0
F.C.C.	0	1	0	0	0	0	0	0	0
Justice	0	2	0	1	35.0	0	0	0	0
T.V.A.	0	1	0	0	0	0	0	0	0
	0	288	0	18	$692.0	26	$3690.6	10	$6205.0

*funded by installation

Total No. Projects 54
Total Cost ($1000.00) 10,587.6

provide State air pollution control agencies with schedules by which the Federal installation proposes to come into compliance with the State's regulations. If these compliance schedules are acceptable to the State, public hearings are required to provide all interested persons an opportunity to make comments on the schedule.

These compliance schedules were to be presented to EPA by February 15, 1973, for appropriate action. EPA Administrator William Ruckelshaus contacted all Federal agencies, urging them to cooperate with State agencies in this effort.

To date, no compliance schedules for Federal facilities located in Florida have been received by the EPA Region IV. Therefore, no meaningful evaluation of the compliance status of air pollution sources located on Federal installations in the State of Florida can presently be made.

(b) Section 306 of the Clean Air Act required the adoption of Executive Order 11602 which was approved on June 29, 1971. Regulations pursuant to this Executive Order and Section 306(b) have yet to be promulgated by EPA. Promulgation of these regulations will soon be initiated, and once they are established, a specific program will be pursued by EPA.

Section 508 of Public Law 92-500 requires the adoption and approval of an executive order. Regulations will be promulgated by EPA pursuant to Section 508(c) once this executive order has been implemented.

In the interim, a program is under way with GSA, Region IV,

regarding lease, purchase, and sale of Federal property and procurement of materials and supplies. GSA notifies the Enforcement Division, EPA, Region IV, whenever such activity is being considered. If there is any EPA enforcement action connected with their transaction, advice is offered regarding violations of Section 306 of the Clean Air Act or Section 508 of Public Law 92-500. If such violations are involved, the transaction is canceled by GSA. Region IV's Federal Activities Office has had discussions on the implementation of both Section 306 and 508 with Army Procurement, a branch of the U. S. Army Materiel Command.

CATALOGUE OF ATTACHMENTS

Number	Description
1(a) - 1	Regional directive establishing procedure for implementing Wetlands Policy.
1(a) - 2	Examples of correspondence from EPA, Region IV, to the Corps of Engineers concerning Section 10 permits.
1(a) - 3	Statement by John Baumeister, Chief, Dredging and Facilities Section, Permit Branch, EPA, Region IV, at a Public Hearing on Florida Dredge and Fill Rules, Tallahassee, Florida, February 6-7, 1973.
3 - 1	Summary of Conference (First Session): Pollution of the Navigable Waters of Dade County and Tributaries, Embayments and Coastal Waters.
3 - 2	Summary of Conference (Second Session): Pollution of the Navigable Waters of Dade County and Tributaries, Embayments and Coastal Waters.
3 - 3	Summary of Conference (Third Session): Pollution of the Navigable Waters of Dade County and Tributaries, Embayments and Coastal Waters.
3 - 4	Industrial Waste Survey, Dade County, Florida.
3 - 5	Final Environmental Impact Statement: Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida.
5(b) - 1	Proceedings: Conference in the Matter of Pollution of the Navigable Waters of Dade County, Florida, and Tributaries, Embayments and Coastal Waters.
5(b) - 2	A Synoptic Survey of Limnological Characteristics of the Big Cypress Swamp, Florida.
5(b) - 3	Proposal to Apply Mathematical Model Techniques to Assessment of Water Quality in Dead-End and Finger-Fill Canal Systems.

CATALOGUE OF ATTACHMENTS - Continued

Number	Description
5(d) - 1	Copies of correspondence to the U.S. Army Engineer District, Mobile, concerning canal development proposed by The Grand Lagoon Company.
6(c) - 1	Letter from Paul Traina of EPA, Region IV, to Colonel Emmett Lee of the U. S. Army Engineer District, Jacksonville, recommending that the Corps prepare an environmental impact statement prior to issuance of a Section 10 permit for ITT's Palm Coast canal system.
7 - 1	Letter from Governor Askew to Administrator Ruckelshaus recommending changes in the National Pollutant Discharge Elimination System.
7 - 2	Letter from Albert Printz of EPA headquarters to Governor Askew responding to his recommendations concerning the NPDES.
11(a) - 1	Enforcement Division Quarterly Report for the period October 1, 1972 through December 31, 1972.
11(a) - 2	Enforcement Division Quarterly Report for the period January 1, 1973 through March 31, 1973.
11(b) - 1	Summary Report, Violation of Section 203 of the Clean Air Act by Haney Chevrolet, Inc., of Orlando, Florida.
12(a) - 1	Final Judgment, United States of America v. Florida Power and Light Company.
12(b) - 1	Chart: Acres of Cooling Surface Completed, Turkey Point, Florida Power and Light Company.
12(b) - 2	Construction Schedule, Week ending May 5, 1973, Turkey Point Cooling Canals System, Florida Power and Light Company.
12(b) - 3	Progress Chart, Week ending May 5, 1973, Turkey Point Cooling Canals System, Florida Power and Light Company.
12(b) - 4	Status Report on Implementation of the Final Judgment, U.S.A. v. Florida Power and Light Company, May 1973.

CATALOGUE OF ATTACHMENTS - Continued

Number	Description
15(b) - 1	EPA, Region IV, news release concerning ocean dumping permits.
15(b) - 2	Letter from Paul Traina requesting information on ocean dumping activity in Region IV, and list of addressees.
15(b) - 3	Letters received in response to above request.
17(a) - 1	Inventory Information on Federal Installations in Florida:
	17(a) - 1 - 1: Waste Disposal Practices at Federal Installations, Volume 10: Florida.
	17(a) - 1 - 2: Real Property Owned by the Federal Government in the State of Florida.
	17(a) - 1 - 3: Installations in the State of Florida Identified as Potential Sources of Surface Waste Discharges by the Environmental Protection Agency, Region IV, Federal Activities Office.
17(a) - 2	Detailed Summaries by Agency of the Status of Water Pollution Abatement at Federal Installations in Florida.
17(a) - 3	Detailed Listing of Completed and Active Water Pollution Abatement Projects at Federal Installations in the State of Florida.
17(a) - 4	Supporting Documents for Compliance Assessments.
17(a) - 5	Guidelines for Waste Treatment at Federal Installations.
17(a) - 6	Detailed Listing of Completed and Active Air Pollution Abatement Projects at Federal Installations in the State of Florida.

ATTACHMENT 7-1

STATE OF FLORIDA

OFFICE OF GOVERNOR REUBIN O'D. ASKEW

RECEIVED DPC
MAR 16 1973
EXECUTIVE DIRECTOR

March 14, 1973

Honorable William D. Ruckelshaus
United States Environmental
Protection Agency
1626 K Street, Northwest
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Thank you for your letter of December 8, 1972, concerning the 1972 amendments to the Federal Water Pollution Control Act.

As you pointed out, one of the most important provisions of Public Law 92-500 is the implementation of a National Discharge Permit System. That program, as explained in the guidelines of the Environmental Protection Agency, is acceptable to the State of Florida.

However, the proposed program appears to be in conflict with Sections 101 (b) and (f) of the Act, which states it to be federal policy to protect the primary responsibility of the State to abate pollution and to prevent needless duplication. In that regard and without citing all the applicable sections of your guidelines, I would recommend that the following changes be made:

1. All existing permits should be recognized as such and grandfathered into the new system.

2. The Administrator should waive his right to review permits issued by the Florida Department of Pollution Control. Such waiver should be absolute and based upon the fact that our program is approved, that we will only grant permits under allowable standards, and that review by the Environmental Protection Agency would be redundant.

3. Public Notice requirements should be severely narrowed.

4. The requirement that the State must give notice of its intent to either issue or deny permits should be deleted.

5. Costs of permit hearings and public notices should be borne at least in part by the Federal Government.

As you know, the State of Florida has a viable permit program in operation for both air and water pollution sources. All water sources are to be in compliance with secondary treatment standards this year, with non-complying facilities operating under tightly restricted Temporary Operation Permits. A review of our statutes indicates little need for change to comply with the requirements under Public Law 92-500.

We are looking forward to the creation of a workable partnership between your agency and the State of Florida. It is suggested that a meeting between members of your staff, members of my staff and members of the Florida Department of Pollution Control be held as soon as possible to finalize our permitting endeavors.

I am certain that our goal, clean water for Florida, is also your goal and together we can make great strides forward.

With kind regards,

Sincerely,

Governor

ROA/ljm

cc: Mr. Peter P. Paljet
Department of Pollution Control

ATTACHMENT 7-2

April 4, 1973

Honorable Reubin O'D. Askew
Governor of Florida
Tallahassee, Florida 32304

Dear Governor Askew:

Thank you for your March 14, 1973, letter to Mr. Ruckelshaus in which you advise that the implementation of a National Discharge Permit System in the State of Florida pursuant to Environmental Protection Agency guidelines published under provisions of Public Law 92-500, is acceptable to Florida.

Thank you also for your recommendations for changes in the EPA guidelines. The requirement that all permits be issued under the Act, the authority for EPA review of proposed permits, and the various requirements for public notice and public participation are provided for in the Act itself (see, e.g., sections 101(a), 402(b), and 402(d)). We intend to propose regulations in the near future under section 402(f) for waiver of EPA's review authority with respect to certain categories and classes of permits. State program grants made by the Federal Government under section 106 of the Act will help defray the expense of operating an approved permit program, including the costs of public notices and permit hearings.

We feel that your staff and our regional staff can devise working arrangements that will eliminate any potential program duplication. I have contacted Mr. John White, Deputy Regional Administrator in Region IV, and have asked him to assist your offices in every way possible. Please call him to arrange the meeting you suggested at a time convenient to you and your staff. His telephone number is 404 526-5727.

We are confident, as you are, that we can work together to achieve clean water for Florida.

Sincerely yours,

cc: Mr. Quarles (2)
Region IV (2)

/sgd/ Albert C. Printz, Jr.

Albert C. Printz, Jr.
Director, Office of Permit Programs

RAEMMETT:lsy:4/3/73
MTST AB 3

ATTACHMENT 1(a) - 2

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

January 18, 1971

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Attn: Mr. A. L. McKnight
Chief, Operations Division

Subject: SAJSP (70-825) State of Florida, Department of Transportation, Okeechobee Waterway, South Fork St. Lucie River, Martin County, Florida

Dear Sir:

The Florida Department of Transportation, the applicant, requests an after-the-fact permit for the construction of a storm drainage outfall in Okeechobee Waterway, South Fork St. Lucie River, Martin County, Florida.

As a matter of policy, the Southeast Regional Office of the Environmental Protection Agency does not approve after-the-fact permit applications. To do so would be to give official sanction to an alleged illegal operation.

Sincerely yours,

Arthur G. Linton, Chief
Federal Facilities Branch

cc Mr. Herbert H. Rogers

HCL:AGL:cfb

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

February 11, 1971

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Attn: Mr. A. L. McKnight
Chief, Operations Division

Subject: SAJVK Permits (66-333)

Dear Sir:

Reference is made to your letter of January 29, 1971, concerning the applicati of the Marina Bank and Trust Company for a Department of the Army permit and the public hearing scheduled for February 24, 1971, for excepting statements regarding this application.

We feel that our letter of January 22, 1971, explains our position in this matter. Since we do find it impossible to be present, we have no objection to this letter being read into the record of this public hearing.

Sincerely yours,

Arthur G. Linton, Chief
Federal Facilities Branch

cc Mr. Edward T. Heinen
Mr. John W. Wakefield
Mr. Herbert H. Rogers

AGLinton:cfb

20-733 O - 73 - pt. 1A - 65

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

January 22, 1971

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Attn: Mr. A. L. McKnight
Chief, Operations Division

Subject: SAJSP Permits (66-333)

Dear Sir:

This is in reply to the letter written to you on December 29, 1970, by William H. Taft, Ph.D. of Tampa, Florida.

The designated fill area has been surveyed in detail by the Bureau of Sport Fisheries and Wildlife. It contains valuable mangrove and sea grasses and a large variety of fish and fish food organisms. Previous fills to the north and east of the designated fill area have already encroached on the bay under previous permits. Although the fill area is to an established bulkhead line, it lies in a valuable shallow water area between the bulkhead line and the mean high water line.

Water quality values in the area are very good for the reproduction of fish and wildlife although there is undoubtedly some seepage into the area from septic tanks in the residential area to the east. This can be rectified by placing these homes on the regular Tampa sewage collection system.

The Bureau of Sport Fisheries and Wildlife made a reply to this permit request on August 27, 1969, and since they surveyed the area in detail and we were in agreement with them, we did not make a seperate report. Their reply should be considered to be the official U. S. Department of the Interior's viewpoint on this permit. The Federal Water Quality Administration was at that time a part of the U. S. Department of the Interior.

We are in agreement that the fill should be confined to the area above mean high water and that the borrow area should be confined to a single access channel not over 25 feet wide to deep water.

Since the permit consists of the destruction of a valuable estuarine area of significant size and the obliteration of water quality values in this area, the Environmental Protection Agency recommends that the permit in its present form be denied.

Sincerely yours,

Arthur G. Linton, Chief
Federal Facilities Branch

cc William H. Taft, Ph.D.
Mr. Albert C. Printz, Jr.
Mr. Herbert H. Rogers

WET:AGL:cfb

Southeast Region
Suite 300, 1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

February 24, 1971

Mr. Clarence S. Lorentzson
Field Representative to the Secretary
Southeast Region
United States Department of the Interior
404 Financial Services Building
148 Cain Street, N. E.
Atlanta, Georgia 30303

Dear Mr. Lorentzson:

This is in reply to your letter of February 2, 1971, regarding permit applicat SAJSP (70-663), dated October 22, 1970, by DiVosta Rentals, West Palm Beach, Florida, to construct a bulkhead and fill in Lake Worth.

Lake Worth is a valuable estuarine area that has been subject to continual encroachment and abuse by construction and dredge and fill projects. Recent studies by the EPA on Lake Worth indicate that although it has some signs of degradation, it is not beyond recovery. Further encroachment by bulkhead and fill will make that recovery more difficult and protracted. It is the opinion of the Environmental Protection Agency that the only way in which water quality values and the water use classification of Lake Worth can be preserved is to prevent any further development of land within the Lake below the mean high wat line. Although the portion of the Lake to be filled is without vegetation, it does not necessarily follow that it is without value to the marine ecosystem since much of Lake Worth is presently without vegetation and yet supports a valuable sport fishery and organisms valuable to the fish food chain.

The development by DiVosta Rentals is only a part of an overall encroachment on the shallow water areas of Lake Worth and it is to this overall encroachment that EPA objects.

We see no reason for altering our recommendation of November 4, 1970, that any fill be confined to the area above mean high water line.

Sincerely yours,

Arthur G. Linton, Chief
Federal Facilities Branch

cc Corps of Engineers, Jacksonville
Corps of Engineers, SAD, Mr. Herbert Rogers
Bureau of Sport Fisheries and Wildlife

WET:AGL:cfb

Southeast Region
Suite 300, 1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

April 19, 1971

District Engineer
U. S. Army, Corps of Engineers
P. O. Box 4970
Jacksonville, Florida 32201

Attn: Mr. A. L. McKnight
Chief, Operations Division

Re: SAJSP Permits (71-112) Mr. Joseph C. Moretti, Excavation of Navigation Channel and fill to maintain 9 canals and a perimeter channel, Florida Bay, Monroe County, Florida

Dear Sir:

An inspection of the site of this proposed work on April 1, 1971, by Mr. L. Lee Purkerson of the Environmental Protection Agency and Mr. Gary Hickman of Bureau of Sports Fisheries and Wildlife revealed that the construction applied for in the above permit has been completed.

We strongly recommend that this case be investigated and that legal action be initiated against the owner for any damages which may have been caused to the environment.

Sincerely yours,

John R. Thomas
Regional Director

cc Mr. Herbert H. Rogers

WET:AGL:cfb

Suite 300, 1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

June 21, 1971

District Engineer
U. S. Army, Corps of Engineers
400 West Bay Street, P. O. Box 4970
Jacksonville, Florida 32201

ATTN: A. L. McKnight
Chief, Operations Division

Subject: SAJSP, Permits 71-209
Construct Bulkheads and Excavate Navigation Channel and 3 Canals, Myakka River, Sarasota County, Florida

Dear Sir:

The project should be carried out in a manner consistent with the requirements of the Water Quality Improvement Act of 1970, State and Federal Water Quality Standards and the attached "Water Quality Considerations" dated April 1971.

Particular attention should be paid to the retention and containment of solids to meet the Florida turbidity requirements of 50 Jackson units and other water quality parameters as prescribed in Chapter 17-3 of the Florida Administration Code.

ARTHUR G. LINTON, Chief
Federal Facilities Branch

Attachment

WET:ACL:ndh

Suite 300, 1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

July 8, 1971

District Engineer
U. S. Army, Corps of Engineers
400 West Bay Street, P. O. Box 4970
Jacksonville, Florida 32201

ATTN: Gail G. Gren
Chief, Operations Division

Subject: SAJSP, Permits 71-209
Construct Bulkheads and Excavate Navigation
Channel and 3 Canals, Myakka River,
Sarasota County, Florida

Dear Sir:

This letter is to supplement our reply of June 21, 1971 for the subject project.

An on site inspection of Permit P(71-209) revealed that this area is practically a virgin river ecosystem with a climatic marsh grass-palmetto-palm vegetation. Except for about thirty buildings near the U.S. Highway 41 bridge there are no developments for several miles on the river. The existing houses, motels, and marina are most likely on septic tanks which at present are enriching the river at a minimal level. The increased number of residences and the related activities will undoubtedly increase nutrient flows into this portion of the river and coupled with the sluggish flows in the finger canals will cause increased production of planktonic algae which will be the first of many changes to this river ecosystem.

To prevent these changes to a truly wild river apparently is impossible but County and State officials should take note of what has happened on the east coast of Florida at the same latitudes and realize methods of developing real estate have to change if our environment is to be somewhat livable.

The completion of this project will irretrievably commit many acres of valuable marshland to dry land for a housing development. This marshland is a highly productive nursery and feeding area for countless aquatic animals and wading birds.

An alternative to mediate the damage that will occur is to restrict development to land that is at least 200 feet from the present bulkhead line. This would allow a buffer zone of vegetation between the development and the river. Actually we must have laws that restrict development some few hundred feet from the MHW line on all coastal zones and rivers of the United States.

Sincerely yours,

ARTHUR G. LINTON, Chief
Federal Facilities Branch

EFM:CHK:AGL:ndh

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren

Reference is made to previous correspondence from this office dated January 7, 1972 relative to an application by Mr. Joseph R. Harrison, Jr. to perform dredging in Key Largo, Florida area. (PN 71-1224) 12-3-71

It is our understanding that the applicant has modified the dredging plan to comply with the recommendations contained in our January 7, 1972 letter and has also modified the entrance channel to minimize the destruction of marine resources. Inasmuch as this application does not fall under the purview of the dredging moratorium recently imposed by the Florida Department of Water Pollution Control, we have no objection to the issuance of a permit provided that:

(1) A silt barrier is used to contain turbidity and sedimentation from open water dredging.

(2) Upland local dredging is accomplished behind a plug and will not be connected to open waters until turbidity levels conform to the state standard of 50 Jackson Units.

(3) The applicant complies with any recommendations which are made by the U.S. Fish and Wildlife Service to protect marine resources.

The opportunity to provide you with these comments is appreciated.

Sincerely yours,

John C. White
Director, Enforcement Division

bc: U.S. Fish & Wildlife Service
3 4/6/72
JBaumeister/eal/4-6-72

MAY 8 7

Mr. Gail C. Oren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Oren:

The Environmental Protection Agency has reviewed the plans submitted by the City of Delray Beach to construct a 72" storm drain outfall in the Intracoastal Waterway (PN 72-0232, dated April 6, 1972).

The operation of a storm drain the size proposed in this application could have a serious impact on water quality by concentrating fresh-water run-off into a small estuarine system and thus reduce ambient salinities too rapidly. Unless the applicant can adequately demonstrate that the fresh water discharged through this facility will not permanently change salinity patterns more than 10 per cent over the natural variation we recommend that this permit be denied.

Sincerely yours,

(5)

John C. White
Director, Enforcement Division

cc: Mr. Jerry L. Stegman
Regional Supervisor, Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

O.K. H

bc: Mr. Dave Hopkins
Lower Florida Estuary Study

Attachment 1-2

Ref:4AEE:JLZ

SEP 22 1972

Harry Morrison - dredge conf - Miss Harbor Passage,

Colonel Harry A. Griffith
District Engineer
U. S. Army Engineer District, Mobile
Post Office Box 2288
Mobile, Alabama 36601

Dear Colonel Griffith:

With reference to Public Notice No. 72-186, dated August 10, 1972, which was forwarded to this office for review, the following is submitted:

Since the work advertised by this public notice has already been accomplished, the applicant is, in effect, requesting an "after-the-fact" permit, and the work completed was done illegally. We consider the application to be prima facie evidence of a violation of Section 10 of the River and Harbor Act of 1899, and strongly recommend that your office initiate legal proceedings against the applicant for such violation.

This office is conducting an investigation into the possibility of a violation of Section 13 of the same Act.

In view of the above, we request that the permit be denied.

Very truly yours,

Original Signed By:
John C. White
Director, Enforcement Division

cc: John Baumeister

Ref: 4AEP:JWB

OCT 1 2 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

The Environmental Protection Agency has completed its evaluation of plans contained on Public Notice No. 66-188, which advertised an application by Gables-by-the-Sea, c/o Connell Associates, Inc., to dredge and fill in Biscayne Bay, Dade County, Florida.

Based on our review and the findings of recent studies conducted by the Bureau of Sport Fisheries and Wildlife, we conclude that resource losses from this work would have a severe impact on the marine environment of South Biscayne Bay. Therefore, we recommend that issuance of a Department of the Army permit for the project as currently planned be denied.

Sincerely yours,

John C. White
Director, Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Ref: 4AEP:JWB

DEC 20 1972

Colonel Harry A. Griffith
District Engineer
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36628

Dear Colonel Griffith:

This agency has completed its evaluation of plans contained in Public Notice No. 72-193, which advertised an application for a Department of the Army permit by Mr. Thomas A. Barba to dredge an access channel and remove an earthen plug in Pensacola Bay, Santa Rosa County, Florida.

These plans indicate that approximately 15,400 feet of inland canals have been excavated into high ground behind the earthen plug. We also understand that the applicant has dredged and deposited spoil below the mean high tide line without a Section 10 permit.

After looking at all aspects of the development, we have concluded that completion of the project, as currently planned, will have far reaching, adverse effects on water quality and the marine biota. The dredge and fill work already completed below the mean high tide line has resulted in significant damages to the estuarine ecosystem as documented in the report of the Bureau of Sport Fisheries and Wildlife, dated November 2, 1972. Furthermore, we anticipate the extensive system of dead-end canals which have been dredged into high ground will become polluted as a result of nutrient over-enrichment from urban runoff.

This, coupled with poor tidal flushing and water circulation in the finger canals, can create eutrophic conditions within a few years and, ultimately, cause nuisance algae blooms, oxygen depletion, and possibly fish kills. Thus, removal of the earthen plug would extend the zone of degradation and associated problems into Pensacola Bay.

In conclusion, since some of the work advertised on the public notice has been completed in violation of Section 10 of the River and Harbor Act of 1899, we strongly urge you to initiate criminal and legal action to compensate for the loss of valuable wetland habitat. We further recommend that issuance of a permit to connect the interior canal system to Pensacola Bay be held in abeyance until the applicant furnishes satisfactory evidence that water circulation will be sufficient to maintain water quality standards. This evidence should be provided by studies conducted by qualified experts in the field of mathematical modelling and tidal hydraulics.

Sincerely yours,

Original Signed By:

John C. White
Director, Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Ref: 4AEP:JWB

DEC 21 1972

Colonel Emmett C. Lee, Jr.
District Engineer
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Lee:

This agency has reviewed the plans contained on Public Notice No. 72-0972, which advertised an application by the Brevard County Board of Commissioners for a permit for an existing canal connecting into Lake Washington near Melbourne, Florida.

Based on studies conducted by the Bureau of Sport Fisheries and Wildlife, we understand that the channel excavation, which has been completed, has resulted in environmental damages to a fresh water marsh. The area which has been destroyed is of significant value in the maintenance of fish and wildlife resources of the St. Johns River system. We are in basic agreement with the Bureau's position concerning this project and recommend, that unless the applicant can demonstrate a genuine public need for maintaining the canal in its present condition, issuance of the permit be denied and marshlands be restored to their original condition.

Sincerely yours,
Original Signed By:

John C. White
Director, Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

12/20/72

Ref 4AEP:JWB

DEC 2 2 1972

Colonel Harry A. Griffith
District Engineer
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36628

Dear Colonel Griffith:

This office has completed its evaluation of plans contained in Public Notice No. 72-276, which advertised an application by Spanish Village Cove, Inc., to construct timber bulkheads and jetties on each side of an inlet canal leading into Santa Rosa Sound.

The purpose of the proposed jetties, according to the public notice, is to reduce shoaling of the canal mouth which has been caused by the littoral drift of sand along the shoreline. In our view, the jetty construction would simply transfer the shoaling problem from the canal mouth to an offshore area which is presently vegetated by luxuriant stands of rooted sea grasses. Since the environmental consequence of constructing these jetties would be the loss of valuable aquatic habitat, we recommend that issuance of a Department of the Army permit be denied.

Sincerely yours,

Original Signed By:

John C. White
Director, Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

bc: Larry Olinger
Escambia Bay Recovery Study

D.K. 12-15-72

JAN 24 1973

Ref: WASE:JLZ

Colonel Avery S. Fullerton
District Engineer
U. S. Army Engr Dist, Jacksonville
P. O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Fullerton:

With reference to Mr. Oscar E. Ormand's Public Notice No. 72-1351 dated December 18, 1972, which was forwarded to this office for review, the following is submitted:

Since some, if not all, of the work advertised by the Public Notice has already been accomplished, the applicant is, in effect, requesting an "after-the-fact" permit and the work completed was done illegally. We consider the application to be prima-facie evidence of a violation of Section 10 of the River and Harbor Act of 1899 and strongly recommend that your office initiate legal proceedings against the applicant for such violation.

In the event you do not refer this to the U. S. Attorney, please so advise this office as soon as possible. We will then investigate the possibility of referring this matter as a violation of Section 13 of the same Act to the U. S. Attorney.

In view of the above, we request that further action on this permit be held in abeyance until such time as there is a final court determination on the matter.

Very truly yours,

Original Signed By:

John C. White
Director
Enforcement Division

cc. Regional Supervisor,
Bureau of Sport Fisheries and Wildlife
JLZ/lrg(1/23)

MAR 2 1973

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This agency has reviewed the plans contained on Public Notice No. 61-426, which advertised an application by the Des Rocher Sand Company to extend an existing permit to dredge sand for commercial purposes in the Straits of Florida near Key Biscayne, Dade County, Florida.

The proposed dredge area is located within an area which has recently been designated as an aquatic preserve by the Florida Board of Trustees of the Internal Improvement Trust Fund. It is our position that dredging or other alterations would directly conflict with the purpose of the area, which is to preserve the marine environment in its natural state. Therefore, we recommend that extension of the existing permit be denied.

Sincerely yours,

Paul J. Traina
Acting Director
Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

E. T. Heinen
bc: Florida Liaison Planning Office

Dave Hopkins
Lower Florida Estuary Study

K. K. Huffstuttler
Fla State Dept of Pollution Control

12 MAR 1973

Ref: 4AEP:JWB

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

Reference is made to your Public Notice No. 72-1498, which advertised an application by Mallman Development Corporation to install a 16-inch subaqueous sewerage force main across Northwest Channel, Hollywood, Florida.

The proposed force main would be used to convey sewage from the Three Islands Development to the Hollywood Sewage Treatment Plant. This facility does not have capacity to provide adequate treatment at the present time and a Federal grant has been approved which will upgrade the treatment to conform to Federal-State standards. Until this facility achieves the capability of providing the necessary degree of treatment, no further sewer hookups should be permitted. Therefore, we have reservations as to the advisability of issuing a permit for the force main until the proposed treatment plant expansion is complete. However, if the applicant has a demonstrable need to install the facility in advance of the date the new facilities become operational, the attached Water Quality Condition should be appended to the Section 10 permit, adjunct to general condition (d).

Very truly yours,

/s/

Howard D. Zeller
Chief, Permit Branch

1 Enclosure
as

cc: Regional Supervisor
Bureau of Sport Fisheries and Wildlife
Fla. Dept of Pollution Control: Huffstetler
bc: Facilities Branch

WATER QUALITY CONDITION

The force main subject to this permit will not be connected to the City of Hollywood sewer system until approval is obtained from EPA and the Florida Department of Pollution Control.

Ref: 4AEP:JWB

APR 6 1973

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This agency has completed its review of the information submitted by Arvida Corporation relative to the proposed plan of development outlined in Public Notice 72-1484.

Our studies indicate that construction of the development as currently planned will have significant adverse effects on the aquatic environment. We are, therefore, in basic agreement with the position of the Bureau of Sport Fisheries and Wildlife and endorse the modifications recommended in the Bureau's letter report of March 1, 1973. Therefore, until the applicant revises the plans to conform with those modifications, we recommend that issuance of a permit be denied.

Sincerely yours,

Original Signed By:
Paul J. Traina
Director, Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

bc: Bob Howard
Enforcement Branch

Ref: 4AEP:JVB

NOV 6 1972

Colonel Harry A. Griffith
District Engineer
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36628

Dear Colonel Griffith:

The Environmental Protection Agency has reviewed the plans contained in Public Notice No. 72-203, which advertised an application by the Mobile Home Industries to dredge and fill in and adjacent to Walker Creek (Apalachee Bay), Wakulla County, Florida.

Although the effects of the initial construction on water quality will be minimal, we forsee possible long-range water quality degredation in the canals and Walker Creek if domestic wastes do not receive adequate treatment. However, of greater concern to us are the damages to coastal wetlands, which are documented in a report by the Bureau of Sport Fisheries and Wildlife, dated October 24, 1972.

We are in basic agreement with the Bureau's position and recommend that the applicant follow whatever conditions that agency may require to protect aquatic resources. In the event the applicant can resolve the Bureau's objections, we will want to comment further on the adequacy of domestic waste treatment to be employed at the development.

Very truly yours,

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife
B 11/9/72
JVBaumeister/eal/11-9-72

Ref: 4AEP:JWB

JAN 09 1973

Mr. F. F. Stevens
Chief, Permits and Statistics Branch
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36628

Dear Mr. Stevens:

Thank you for providing us with the revised plans submitted by Mobile Home Industries, relative to their dredge and fill development in Walker Creek, Wakulla County, Florida.

Unfortunately, the plans are not of sufficient detail or clarity to permit us to determine the extent of proposed works. Consequently, we recommend that you continue to withhold action on this permit until the applicant has furnished us with a detailed, legible plan of development; including the facilities that will be used to treat domestic sewage.

Very truly yours,

/S

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

We have reviewed the information contained on Public Notice Number 72-923 and have recently completed a field investigation of the development area. Based on these studies, it appears that construction of the proposed lock and dam could have a significant impact on water quality. Therefore, prior to commenting on this application we request that you furnish us with the following information: 5-16-72

(1) A detailed plan of development for the adjacent housing project, including proposed population densities, plans for public water supply, waste collection and treatment systems.

(2) Soil samples and percolation rates if septic tanks are to be used for waste disposal.

(3) A statement indicating future plans for dredging Turkey Creek from the mouth to the proposed lock and dam site.

Until such time as we have received this information and had sufficient time to determine the water quality impact, we recommend that you withhold issuance of a Department of the Army permit.

Sincerely yours,

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Baumeister

TO : Chief, Permit Branch, Region IV
EPA, Atlanta, Georgia

DATE: June 9, 1972

FROM : Chief, Florida Liaison Office
EPA, Orlando, Florida

SUBJECT: Corps of Engineers' Section 10 Permit No. (72-0423),
General Development Corporation
1111 S. Bayshore Drive, Miami, Florida 33131
Melbourne-Tillman Drainage Canal Number One, Turkey Creek

Gene McNeill and I met Tom Tallie of the Bureau of Sport Fisheries and Wildlife and Dave Harris of the Florida Game and Fresh Water Fish Commission in Melbourne on June 7 to investigate the above permit application.

It is readily apparent that the area in question is considerable with drainage canals running through many square miles lying adjacent to, and in, the St. Johns River Valley. This surrounding area is currently involved in controversy with the Corps/FCD project works in the Upper St. Johns River. Dr. Suzanne Bayley is investigating this area for EPA while the State has at least two different studies underway in the area. All studies will shed light on water resources and should be included in any management considerations.

Much of the controversy concerns the fact that the Melbourne-Tillman Drainage District has actually been responsible for taking water from the St. Johns Valley (marginal high water floodplain areas) and diverting it to the coastal area near Melbourne. Downstream flows in the St. Johns are thus reduced by the amount being diverted, especially at times of high water. With the canal diversion, flood control can be provided for marginal lands, permitting intensive development.

While the proposed dam and lock will restore or maintain higher groundwater levels over a longer period of time than is now possible because of the extensive drainage canal system, there are unanswered questions relative to the development plans.

Before we can comment on the lock and dam feature of the project, we should request additional information concerning:

1. Water and sewerage plans for the entire project area, including the collection, treatment, and disposal methods and facilities for wastewater.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

2. Soil samples as needed depending upon wastewater treatment plans being recommended.

3. Proposed population densities within the project area.

4. Detailed development plans for the area.

5. Item #4 should include specific details relative to any proposed dredging of Turkey Creek from its mouth to the lock and dam site. This is particularly important in terms of water quality since the site is approximately two miles inland. Navigation to this point would undoubtedly permit salt water intrusion, especially during periods of low flow. This coastal area already is beset with water quality problems concerning salt water intrusion into the shallow aquifer. The lock and dam site may well be located too far inland.

I therefore am suggesting, in accordance with our telephone conversation on this project June 8, that we obtain an extension of time for commenting on the project and request additional data as indicated. Both the Game and Fish Commission and BSF&W representatives concurred generally with these thoughts and indicated that their agencies would also request additional information.

E. T. Heinen

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
PEACHTREE-SEVENTH BUILDING
ATLANTA, GEORGIA 30323

June 22, 1972

Miss June Whelan
Field Representative, Southeast Region, USDI
404 Financial Services Building
148 Cain Street, N.E.
Atlanta, Georgia 30303

Dear Miss Whelan:

The Bureau of Sport Fisheries and Wildlife has reviewed the notice of application received from the Jacksonville District, Corps of Engineers, SAJSP, 72-0423, dated May 16, 1972. The applicant, General Development Corporation, has requested a Department of the Army permit to construct a lock and dam in Melbourne-Tillman Drainage Canal Number One, near Palm Bay, Brevard County, Florida.

We find the accompanying data are insufficient to fully evaluate project effects on fish and wildlife resources. Therefore, the Bureau of Sport Fisheries and Wildlife urges that action on this permit be held in abeyance until we have had the opportunity to provide you our comments based on adequate project information. It is requested that the following data be provided this office and our Vero Beach, Florida, field office for use in making this evaluation.

1. Aerial photographs, maps or other schematic diagrams, and verbal description of areas affected by Melbourne-Tillman Drainage District, including:

   A. Historical drainage patterns
   B. Present drainage patterns
   C. Present land use
   D. Present land use zoning and future zoning proposals.

2. Bottom elevations of Melbourne-Tillman and General Development Corporation canals and/or other waterways within the Drainage District area.

3. Bottom elevations of Turkey Creek downstream from the proposed structure.

4. Present average daily flow and projected flow after dam construction in Canal Number One.

5. Proposed water level regulation schedules of Canal Number One after dam construction.

6. Quality of water (chemical data) presently being discharged and projected quality of water after dam construction.

7. Applicants total plan of waterway and adjoining upland development, including type and location of sewage treatment facilities and effluent outlets, volume and characteristics of all effluent discharges (solid and liquid).

Sincerely yours,

/s/ Jack E. Hempnu

Deputy Regional Director

ENVIRONMENTAL PROTECTION AGENCY

REPLY TO ATTN OF: 4ARE:CNS

DATE: September 26, 1972

SUBJECT: Port Malabar Development; Palm Bay, Florida; by General Development Corp.

TO: Investigation Files
Howard Zeller
John White
E. T. Heinen

SUMMARY

On September 25, 1972, at the request of Mr. E. T. Heinen, Chief, EPA Liaison Office, Orlando, Florida, I met with eight State and local officials (see attached list) in Brevard County, Florida, to discuss water pollution from General Development Corporation's Port Malabar housing development at Palm Bay, Florida. This project includes a navigation lock to connect canals within the Port Malabar development with intercoastal waterways for which a Section 10 permit with EPA approval is required.

Three potential sources of pollution are evident. These are:

a. Effluents from septic tanks could seep into the lateral canals from which they could flow via Canal No. 1 into Turkey Creek, thence into Indian River causing pollution of nearby oyster beds.

b. Stagnant water could develop in some of the lateral canals if a flow is not maintained.

c. A buildup of oil, grease, lead and other pollutants could occur from operation of boats in the canal systems. These pollutants then could be carried into and cause pollution of oyster beds in Indian River.

Pollution from each of the above mentioned sources can be avoided with proper engineering and construction at this development.

ACTION

I recommend approval of their application for construction of a lock between Canal No. 1 and Turkey Creek, subject to the following conditions:

a. That after raising canal water levels, county and State regulations prohibiting the installation of a septic tank

on any property where the water table elevation during the wettest season of the year is less than thirty-six (36) inches of finished grade be strickly enforced.

b. That the lateral canals be designed so that each contributes a portion of the flow through the lock into Turkey Creek. Flow distribution from lateral canals should be as near equal as is practical to avoid stagnation of any canal. Continuous flow must be maintained from the canal system into Turkey Creek.

c. Effluent limits for oil, grease, lead, bacteria and possibly other parameters should be set on waters discharging from the development. These effluent standards are intended to control both oil and grease from motorboats and bacteria from septic tanks which could accumulate in the canals. The purpose of these standards is to prevent pollution of water and oyster beds in Indian River.

BACKGROUND

See files in Permits Branch.

Charles W. Sever
Hydrologist

United States Department of the Interior
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
PEACHTREE-SEVENTH BUILDING
ATLANTA, GEORGIA 30323

November 7, 1972

Miss June Whelan
Field Representative, Southeast Region, USDI
404 Financial Services Building
148 Cain Street, NE.
Atlanta, Georgia 30303

Dear Miss Whelan:

The Bureau of Sport Fisheries and Wildlife has reviewed the notice of application received from the Jacksonville District, Corps of Engineers, SAJSP, 72-0423, dated May 16, 1972. The applicant, General Development Corporation, has requested a Department of the Army permit to construct a lock and dam in Melbourne-Tillman Drainage Canal Number One, Turkey Creek, near Palm Bay, Brevard County, Florida. Our comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The structure to be placed in Canal Number One will inundate approximately 14 miles of upland canals to a depth sufficient to allow navigation by small craft. The flow from the structure will entail the total discharge from the 62,000-acre drainage area. Most of the upland area is presently pine and palmetto scrub with some improved and unimproved pasture. The most eastern parts are residential areas. General Development Corporation has subdivided approximately half of the area and is promoting urban development. Sewage facilities and discharges are regulated by local and State agencies.

The western half of the area historically drained into the St. Johns River Basin, and the eastern half drained into the Indian River. After establishment of Melbourne-Tillman Drainage District in the 1920's, all drainage was routed to the Indian River. Establishment of several such drainage districts within the St. Johns River Basin has created water management problems which now dictate a need for a central controlling body. Establishment of such a body is presently being enacted by the State of Florida with Federal assistance.

The Bureau of Sport Fisheries and Wildlife has a legal responsibility to review any water management programs which might be initiated by State or Federal agencies. In order to fairly assess the resources of the area and to comment competently on the multiple needs of the region, it is necessary to be fully informed on all conditions which might affect such a program. We understand from our correspondence and discussions with

cc:
WQC, EPA, Atlanta, Ga.

the applicant that canal excavation and construction of water control structures within the drainage district are to continue beyond the scope of this permit. Long range implications of such works will directly and/or indirectly affect the resources of the St. Johns River area.

Although there is no legal obligation involved, our agency respectfully requests that it be informed of any major constructions within the Melbourne-Tillman system in the future. This could be accomplished by direct communication between Melbourne-Tillman Drainage District and our Vero Beach, Florida, field office. This would inform our field personnel of local conditions and enable them to make adequate assessments of area needs. If the Melbourne-Tillman Drainage District should be desirous of soliciting our comments on these works, we would gladly provide them with the complete understanding that there be no obligation of their being implemented. We feel this cooperative effort would better serve the long-range needs of the area.

In reviewing this permit, we have been unable to determine the means of access to be used from Melbourne-Tillman Canal Number One to Palm Bay. Examination of Turkey Creek has revealed that it is inadequate to accommodate the boat traffic implied by construction of the lock. The permit application, as submitted, is an incomplete treatment of the project. Therefore, this Bureau recommends that the permit be denied until access facilities from the lock and dam to Palm Bay are delineated, the plans are reviewed, and comments are provided by appropriate agencies.

Sincerely yours,

Regional Director

Ref: 4AEP:JWB

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This office has made a detailed evaluation of the plans submitted by General Development Corporation relative to the lock and dam which they propose to construct in the Melbourne-Tillman Canal (PN 72-0423).

Based on these studies we conclude that it is not possible to determine the total impact of this structure on water quality and the aquatic environment without additional information. Therefore, we request that the applicant furnish us with the following information:

(1) Bottom profiles and anticipated water levels in all canals tributary to the Melbourne-Tillman Canal.

(2) Complete plans for navigation channel which will be dredged to connect the proposed lock and dam to the Intra-coastal Waterway.

We also request that you defer further action on this permit application until such time as we have received this information and prepared an appropriate response.

Very truly yours,

/s/

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

bc: Charles Sever, Enforcement Branch
E. T. Heinen, Florida Liaison Planning Office

10/17/72

20-733 O - 73 - pt. 1A - 67

Ref: 4AEP:JWB

JAN 16 1973

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This office has had an opportunity to review the information submitted by General Development Corporation relative to the navigation facilities planned for the Melbourne-Tillman Canal and Turkey Creek. A portion of these plans were advertised in Public Notice Number 72-0423.

Based on our review of the plans, it is our opinion that the proposed structure and the navigation channel in Turkey Creek are inseparable components of the overall plan of development and should be considered together. We therefore recommend that you defer further action on the lock and dam structure until plans for the Turkey Creek channel have been advertised on a Corps public notice and you have received comments from all interested agencies. The plans which accompany the public notice should include:

(1) Method of excavation to be used.

(2) Location of spoil disposal areas.

(3) Detailed location of the channel and channel dimensions.

Very truly yours,

/S

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

bc: Dr. Robert Vernon, Director, Fla. Div. of Interior Resources
E I Hejnen Fla Liaison
U.S. Fish & Wildlife Service, Vero Beach, Fla.

Ref: 4AEP:JWB

FEB 14 1973

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

Reference is made to my letter of January 16, 1973, indicating our position with respect to an application by General Development Corporation to construct a lock and water control structure on the Melbourne-Tillman Canal. As you know, we have received a letter of rebuttal from Mr. Fred Vidzes, dated January 24, 1973, indicating the reasons why the navigation channel can be considered individually.

Although we concur with some of the beneficial aspects of the structure listed in Mr. Vidzes' letter, we remain firm in our position that the water control structure and Turkey Creek boat channel must be considered as a contiguous navigation package. Therefore, unless your agency operates under rules and regulations which prohibits the issuance of a public notice in this situation, we recommend that you advise the applicant of the need to apply for a Section 10 permit for the Turkey Creek navigation channel. Until we have received a public notice or word from your office that this approach is contrary to Corps policy, we will defer commenting on the structure.

Very truly yours,

/s/
Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

bc: Barney Barnes
Florida Pollution Control

Ref: 4AEP:JWB

DEC 0 8 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

Reference is made to your Public Notice No. 69-907, dated October 20, 1972, which advertised an application for an approval of an existing canal system by Associated Investment and Development Corporation.

It is our understanding that this work was accomplished in violation of Section 10 of the River and Harbor Act of 1899 and that the Bureau of Sport Fisheries and Wildlife has made recommendations to restore the area which was damaged. We also understand that the causeway to Pearson Island has been constructed without culverts which has caused a blockage of tidal movement through the causeway fill.

Therefore, we recommend that the permit be conditioned to require the installation of culverts to assure unimpeded flushing thru the causeway at tidal creek crossings. We also request that your agency determine the number and size of culverts required and that installation be performed within a reasonable period of time as specified in the permit.

Sincerely yours,

/S

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife
AS 12/8/72

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT. CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE. FLORIDA 32201

SAJSC Permits (69-902)

6 March 1973

Mr. Jack A. Ravan, Regional Administrator
Environmental Protection Agency, Region IV
1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

Dear Sir:

In order to keep you informed of pending action on controversial permit applications, information is furnished that the above-referenced application by Hamilton G. Kenner, President, Associated Investment & Development Corp., was forwarded for action by higher authority on 5 March 1973.

Sincerely yours,

B. N. GOODE
Chief, Permits & Statistics Branch

Ref: 4AEP:DFP

SEP 29 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

Reference is made to your Public Notice SAJSP 70-824, advertising a proposed revision to an existing permit for excavation adjacent to Matlacha Pass, Lee County, Florida, by John T. Sheets.

Additional information furnished by the applicant has been reviewed, and this agency has no further objection to modification of the permit. However, we believe that there is still a potential for water quality degradation in the canal system. Consequently, in accordance with general condition (d) of the permit document, the applicant should be made aware that in the event future investigations by this agency indicate that water in the canal is of a lesser quality than in contiguous waters of Matlacha Pass, it will be necessary to monitor water quality concordant with a schedule established by the Environmental Protection Agency. Further, if water quality standards are violated, remedial action will be required.

Very truly yours,

/S/

Howard D. Zeller
Chief, Permit Branch

cc: Mr. John T. Sheets

Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

ENVIRONMENTAL PROTECTION AGENCY

REPLY TO ATTN OF: 4AF

DATE: November 3, 1972

SUBJECT: Construction and Discharge Permits, Big Bend Station
Tampa Electric Company

TO: Chief, Permits Branch

SUMMARY

Theoretical calculations indicate that the proposed dilution scheme will not meet requirements established by the Florida Department of Air and Water Pollution Control; however, break-up of the plume can be expected prior to reaching the one °F isotherm. Monitoring of the plume to assure conformance would be virtually impossible, anyway. In addition, alternatives to the dilution scheme do not appear feasible. Cooling towers would probably have sufficient drift to damage tomatoes and other crops grown adjacent to the plant site and would require filling in the area of prime biological concern. Spray modules would require extensive dredging of canals in the same area. An alternative dilution scheme of pumping water around the plant and directing flow into the Bay utilizing the proposed sheet piling would be possible, but might increase recirculation.

ACTION

Chief, Permits Branch is recommended to request a meeting with the State and Bureau of Sport Fisheries and Wildlife to resolve the issue. Resolution of the desirability of the Alternate dilution scheme should be sought.

BACKGROUND

Unit 1 of Big Bend Station of Tampa Electric Company, a 446 MW (stretch) coal-fired facility, has been on-line since October 1970. Condenser flow is 240,000 gpm (534 cfs) with a maximum temperature rise of 16.8°F. Unit 2, an identical unit, is scheduled for commercial operation in February 1973.

Construction permit #IC 1234 was issued by the Florida Department of Air and Water Pollution Control on March 31, 1971 subject to conditions including: "...the zone of thermal influence from the combined operation of Units No. 1 and No. 2 at any load condition utilizing this disposal system, will not be expanded from that resulting from the operation of Unit No. 1 at the same load." and "Water of a temperature of one degree Fahrenheit above ambient water temperature shall be considered to be under thermal influence of the discharged heat."

The disposal system referenced above is a dilution scheme utilizing a 400,000 gpm (890) cfs low-head, low-speed (60 rpm) pump with high clearances (designed for minimal damage to entrained fish) which will yield a mixed discharge temperature of 9.0°F above intake.

Due to the reduced difference in water temperature to air temperature resulting from mixing (16.8-9 = 7.8°F decrease) the driving force for surface cooling is significantly reduced. Consequently, a heat load which has been mixed with an excess quantity of water to a lower initial temperature will require more time and a larger mixing zone area to meet a relatively low isotherm (1°F) above ambient. In addition, the heat load from the two units will double that discharged from Unit No. 1. Therefore, the proposed system will not theoretically meet the requirements of the permit conditions. Under actual conditions; however, the plume will probably break-up due to turbulence in the Bay prior to reaching the one °F isotherm. Under any condition, monitoring of the permit requirement (1°F isotherm) could not be achieved in the field, since Unit 1 discharge conditions do not exist separately once Unit 1 and 2 plus dilution discharge begins. Conformance could only be "proved or disproved" by mathematical techniques, a virtually hopeless task.

Charles H. Kaplan

Charles H. Kaplan
Sanitary Engineer
Federal Activities Office

Ref: WEP:JWB

NOV 09 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

The Environmental Protection Agency has completed its review of plans and supporting data for the thermal dilution system proposed by the Tampa Electric Company for the Big Bend Power Station, Hillsborough Bay, Florida. These plans were advertised on Public Notice No. 71-1283 dated September 11, 1972.

After studying the various alternatives for cooling the thermal effluent, we have concluded that the system advertised in your public notice is acceptable and we have no objections to the issuance of a Section 10 permit for this facility. However, we are deeply concerned over the long-range impact of heated wastewaters on the biological resources associated with the shallow water embayment lying southeast of the discharge point. We also foresee the possibility of eutrophic conditions developing in the dead-end canals which are part of the Apollo Beach community. Therefore, it will be necessary for the applicant to maintain close surveillance of possible water quality and biological change in these areas.

Inasmuch as the applicant will be required to obtain a discharge permit under Section 402 of the Federal Water Pollution Control Act Amendments of 1972, we will defer commenting on the adequacy of the monitoring program until final conditions are developed for that permit. Additional parameters, deemed necessary to monitor the effects of the discharge, will be made a part of that permit. The applicant should also be aware, that in the event that monitoring data indicates plant operation is having an adverse effect on water resources, remedial action will be required to correct the problem.

Very truly yours,

/S/

Howard D. Keller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

bc: Charles Kaplan, Federal Activities
Mike Tiemi, Permit Branch
Fish and Wildlife Service
Vero Beach, Florida

Ref: 4AEP-JWB

SEP 19 1972

Mr. R. W. Davis
Acting Chief, Operations Division
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36628

Dear Mr. Davis:

The Environmental Protection Agency has completed its evaluation of plans contained on Public Notice No. 72-106, which advertised approval of plans for dredging and filling, which are completed for two canals of Hidden Harbor Subdivision, Duck Bayou, Walton County, Florida.

Based on the letter report dated August 17, 1972 by the Bureau of Sport Fisheries and Wildlife, it appears that the dredging and filling which is complete has not had a significant adverse impact on aquatic resources. However, in order to protect existing water quality values in the area, it will be necessary for the applicant to construct septic tanks in a manner that will not contaminate adjacent surface waters

Although we have no objections to the issuance of a Department of the Army approval of plans for this development, we recommend that the attached water quality condition be appended to the permit, adjunct to general condition (b).

Sincerely yours,

/S/

Howard D. Zeller
Chief, Permit Branch

Enclosure
as

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife
R 9/18/72

WATER QUALITY CONDITION

Septic tanks and absorption trenches will be located a minimum of 50 feet from the nearest canal and constructed in accordance with the procedures outlined in the "Manual of Septic Tank Practice," U.S. Public Health Service.

Ref: 4AEP:JWB

SEP 13 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren

This agency has completed its review of plans contained in Public Notice No. 72-700 plus those subsequently furnished by the applicant relative to bulkheading and canal dredging in and adjacent to the El Rio Canal, Palm Beach County, Florida.

Of primary concern to us is the potential water quality degradation which can occur in the proposed L-50 Canal as a result of inadequate water circulation. Although the proposed spur canal will be connected to the El Rio Canal by a 36 inch culvert, we expect that this structure will be relatively ineffective in removing trash and organic debris. Without proper maintenance, the culvert could also become clogged with trash and debris, thus reducing its effectiveness in circulating water.

Consequently, in accordance with general condition (d) of the permit, the applicant should be aware that in the event future investigations by this agency indicate that water quality is of lesser quality than contiguous waters of the El Rio Canal,, it will be necessary for remedial action to be taken to correct the problem.

This agency will offer no further objection to the issuance of a Department of the Army permit for work advertised on the above referenced public notice.

Sincerely yours,

/S

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Ref: 4AEP:JWB

SEP 19 1972

Mr. R. W. Davis
Acting Chief, Operations Division
U.S. Army Engineer District, Mobile
P. O. Box 2288
Mobile, Alabama 36628

Dear Mr. Davis:

The Environmental Protection Agency has completed its evaluation of the plans contained on Public Notice No. 72-120, which advertised an application for approval of plans for two canals which have been dredged into Big Sister Creek, Walton County, Florida.

Based on information obtained during our field investigation of the area, it is our understanding that a portion of the uplands adjacent to the canals will be developed into residential property and that septic tanks will be used to treat domestic sewage. Therefore, it will be necessary for the septic tank system to be located at a sufficient distance from the canals to prevent contamination of surface waters.

We have no objections to the issuance of an approval of plans for the canals, provided that the attached water quality condition is appended to the permit, adjunct to general condition (b); and the applicant follows the recommendations of the Bureau of Sport Fisheries and Wildlife outlined in their letter report of August 23, 1972.

Sincerely yours,

15

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

WATER QUALITY CONDITION

Septic tanks and absorption trenches will be located a minimum of 50 feet from the nearest canal and constructed in accordance with the procedures outlined in the "Manual of Septic Tank Practice," U.S. Public Health Service.

Ref: HAEP:JWB

7 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This office has reviewed the plans submitted by Cherry Estates, Inc. to achieve water circulation in the canal system outlined in Public Notice No. 72-0101. The applicant proposes to construct a tidegate to augment tidal flows in the canals and has provided us with data that indicates that water circulation should be improved with installation of this structure.

Although we recognize that tidal circulation will be enhanced thru the use of a tidegate, it is difficult to predict the long term water quality conditions after development is complete. Because of the extensive nature of the canal system, we believe that there is still a potential for water quality degradation. Consequently, in accordance with general condition (d) of your permit, the applicant should be aware that in the event future investigations by this agency indicate that water in the canals is of a lesser quality than contiguous waters of Pine Island Sound, it will be necessary to monitor water quality concordant with a schedule established by this agency. Furthermore, if water quality standards are violated, it will be necessary for remedial action to be taken to correct the problem.

In conclusion, we have no objection to the issuance of a permit provided the applicant performs the work in accordance with the recommendations of the Bureau of Sport Fisheries and Wildlife as outlined in their letter report of July 14, 1972.

Sincerely yours,

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

APR 0 7 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren

Information has reached this office which indicates that permits for dredging in the Florida Keys which were pending action prior to March 21, 1972, shall not be considered under the moratorium recently invoked by the Florida Department of Pollution Control. This would include the application by Mr. William Roberts for the Bryn Mawr Group. (PN 72-0062.) 2-22-72

Inasmuch as the Florida Department of Water Pollution Control has certified that this work will not violate applicable water quality standards and has in effect a turbidity limitation of 50 Jackson Units, we have no objection to the issuance of a permit provided that

(1) A silt barrier is used to contain turbidity and sedimentation from open water dredging.

(2) The applicant complies with the recommendations of the U.S. Fish and Wildlife Service to protect aquatic resources.

We appreciate the opportunity to provide you with these comments.

Sincerely yours,

John C. White
Director, Enforcement Division

bc U.S. Fish & Wildlife Service

Ref: 4AEP:JWB

AUG 2 3 1972

Mr. Gail C. Gren
Chief, Operations Division
U.S. Army Engineer District
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This agency has completed its review of the plans contained in Public Notice No. 71-1037, plus additional information furnished by Mid Florida Lakes, Inc., concerning the permit application to dredge canals tributary to Haines Creek.

Based on our review of the proposed plan of development, we are concerned over potential water quality problems that could occur in the canals. Previous studies of similar canal developments have shown that the accumulation and decomposition of organic sediments and other wastes, coupled with poor water circulation and flushing, result in severe water quality degradation and related problems. Therefore, it will be necessary for the applicant to monitor water quality in the canals and take remedial action if water quality is degraded.

We have no objections to the issuance of a Department of the Army permit for this work provided that the attached conditions are appended to the permit adjunct to general condition (d). Please furnish this office with a copy of the permit which is issued.

Sincerely yours,

George R. Harlow
John C. White
Director, Enforcement Division

Enclosure
ss

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

8-23-72

20-733 O - 73 - pt. 1A - 68

WATER QUALITY CONDITIONS

(1) Water quality in the canals will be maintained at a level equal to or higher than the water quality in Haines Creek.

(2) The permittee will monitor water quality at sampling stations shown on the attached map according to the following schedule:

Parameter	Units	Frequency of Analysis	Sample Type
Dissolved Oxygen	mg/l	1/week	Grab
Temperature	°F	1/week	Grab
Total Coliform	no/100ml	1/week	Grab

Samples will be collected three feet below the water surface and analysis provided by an acceptable commercial laboratory. Results will be forwarded to the Environmental Protection Agency's Regional Office, Atlanta, Georgia, on a monthly basis. Background studies will be initiated April 1, 1973 and continued through October 31, 1973. Further sampling will be determined by EPA as residential development proceeds.

(3) In the event the permitted activity results in a violation of water quality standards and/or has a detrimental impact on assigned water uses, the permittee will take corrective action to alleviate the problem.

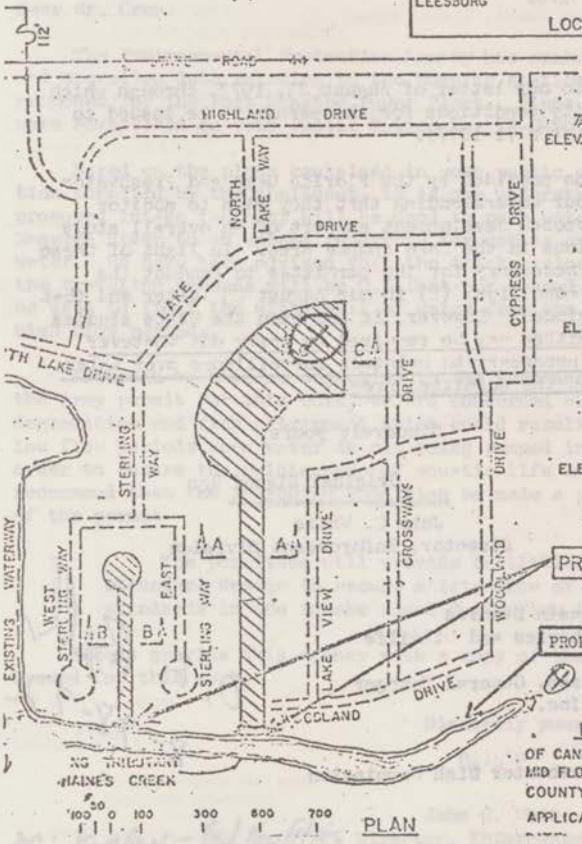
HAINES CREEK AT SR-44

P 71-1037

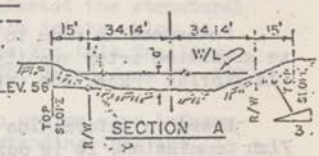
XIMATELY 5200 CUBIC
DS OF MATERIAL TO BE EX-
CAVATED AND DEPOSITED ON AD-
JACENT LANDS OWNED BY APPLICANT

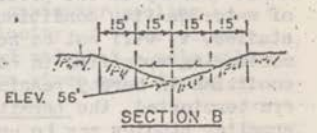
V COR. SEC 1-19S-25E

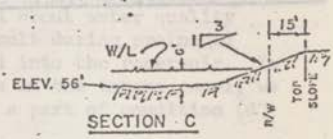
LOCATION PLAN



PLAN







PROPOSED EXCAVATION

PROPOSED CLEANING AND DEEPENING

water sampling stations

PROPOSED EXCAVATION
OF CANAL AND LAKE PLUGS
MID FLORIDA LAKES MOBILE HOME VILLAGE
COUNTY OF LAKE, STATE OF FLORIDA
APPLICATION BY MID FLORIDA LAKES, INC.
DATE June 7, 1972

Ref: WAR:JWB

AUG 2 9 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

Reference is made to our letter of August 23, 1972, through which we submitted water quality conditions for the permit to be issued to Mid Florida Lakes, Inc. (PM #1-10377).

Based on information provided by the Florida Game and Freshwater Fish Commission, it is our understanding that they plan to monitor water quality in the proposed development as part of an overall study of water quality conditions in the Lake Apopka area. In light of these studies, it will not be necessary for the permittee to conduct the monitoring specified in condition "(3) in our August 23 letter and that condition is hereby rescinded. However, if and when the State studies are terminated, the permittee may be required to carry out whatever sampling studies may be necessary to maintain surveillance over water quality conditions within the permitted area.

Sincerely yours,

Original Signed By:

John C. White
Director, Enforcement Division

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Mr. Jack Funsell, Asst. General Manager
Mid Florida Lakes, Inc.

Mr. Bob Snyder
Florida Game and Freshwater Fish Commission

O. K. Keller
8-28-72

Ref: WEP:JWB

AUG 2 1972

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

The Environmental Protection Agency has evaluated the structural and operation data relating to the pumping station intake which is proposed for the Port Manatee Power Plant. Plans for this facility were advertised on your Public Notice No. 72-0478, dated June 27, 1972.

Based on the plans contained in your public notice plus information supplied by the applicant, it is our understanding that the proposed intake facility will be used to pump water from the Little Manatee River to an upland reservoir for use as condenser cooling water. We have been advised that the intake velocity of water across the traveling screens will be 0.5 feet per second and that a weir will be used to limit the withdrawal of water from the river only during high flow periods.

Although we have no objection to the issuance of a Department of the Army permit for this work, we are concerned about water quality degradation and fish entrapment which could result during prolonged low flow periods when water is not being pumped into the reservoir. In order to ensure the maintenance of aquatic life in the intake canal, we recommend that the following condition be made a part of condition (d) of the permit:

> The permittee will provide facilities and/or modify structure design to assure maintenance of water quality standards in the intake canal during low flow periods.

Please provide this agency with a copy of the permit which is issued for this work.

Sincerely yours,

Original Signed By:

John C. White
Director, Enforcement Division

O.K. R.K. 8-2-72

bc: Kaplan - Fed. Facilities

cc Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

DEPARTMENT OF THE ARMY
cksonville District, Corps of Engi rs
400 West Bay Street, P.O. Box 4970
Jacksonville, Florida 32201

PUBL
NOTI

SAJSP Permits (72-0460) 26 July 1972

TO WHOM IT MAY CONCERN:

This District has received an application for a Department of the Army permit as described be

APPLICANT: Fountain Land Company, Inc.
c/o PBR Engineers & Associates, Inc.
1980 North Atlantic Drive
Cocoa Beach, Florida 32952

WATERWAY: Mosquito Control Canal, Lanana River

WORK: To construct a bulkhead and to excavate canals connecting with said canal, South Patrick Drive, Satellite Beach, Brevard County, Florida. The excavated material would be deposited on owner's upland.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineer can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on the public interest. Factors affecting the public interest include, but are not limited to, navigation, fish and wildlife, water quality, economics, conservation, aesthetics, recreation, water supply, flood damage prevention, ecosystems, and, in general, the needs and welfare of the people.

Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public inter to grant a permit.

Plans of the proposed work may be seen at the office of the District Engineer at the above address.

Comments regarding the application should be submitted to the District Engineer at the above address on or before 25 August 1972.

FOR THE DISTRICT ENGINEER:

Gail H. Gren
GAIL G. GREN
Chief, Operations Division

POSTED
29 JAN 1973

DOD-314

DEPARTMENT OF THE ARMY
POSTAGE AND FEES PAID

DEPARTMENT OF THE ARMY
S. ARMY ENGINEER DISTRICT, JACKSONVILLE
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

IMPORTANT
This is NOT a circular.

Ref: 4AEP:JWB

JAN 0 5 1973

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This is to advise you that we have received information from the Fountain Land Company (PN 72-0460) which indicates that tidal flushing and water circulation should be sufficient to maintain water quality standards in the proposed canal system. Therefore, we have no objection to the issuance of a permit for this work.

Sincerely yours,

/S

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

Ref: 4AEP:JWB

JAN 0 5 1973

Mr. Gail G. Gren
Chief, Operations Division
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Mr. Gren:

This is to advise you that we have received information from the Fountain Land Company (PN 72-0460) which indicates that tidal flushing and water circulation should be sufficient to maintain water quality standards in the proposed canal system. Therefore, we have no objection to the issuance of a permit for this work.

Sincerely yours,

/S

Howard D. Zeller
Chief, Permit Branch

cc: Regional Supervisor
Division of River Basin Studies
Bureau of Sport Fisheries and Wildlife

PBR

BRIEL RHAME POYNTER & HOUSER
ARCHITECTS ○ ENGINEERS

ERNEST M. BRIEL, JR., P.E.
E. HARRISON RHAME, P.E.
RAYMOND R. POYNTER, JR., A.I.A.
LYLE M. HOUSER, JR., P.E.

Suite 718 - Cape Royal Building
1980 North Atlantic Avenue
Cocoa Beach, Florida 32931
Telephone (305) 784-0595

Suite 100
6880 Lake Ellenor Drive
Orlando, Florida 32809
Telephone (305) 851-3030

Reply to: Cocoa Beach

27 December 1972

Mr. John Baumeister
Environmental Protection Agency
Region 4
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Re: Fountains Subdivision - Site
Drainage, Satellite Beach, Florida

Dear Mr. Baumeister:

As we discussed prior to Christmas, we have investigated the proposed canal for the time required for a complete change of water. We have inspected the drainage area feeding the existing canal, and we have made several calculations regarding this drainage.

The drainage into this canal system will consist of:

1. Surface run off;

2. Infiltration into pipes; and

3. Surface runoff due to irrigation wells and "water to air" air conditioning wells.

We have calculated these three runoff items separately and based on the capacity of the canal have calculated a complete change of water about every 10-1/2 days. The average annual rainfall based on Patrict Air Force Base records is 46.11 inches/year. The drainage area feeding the canal system is completely platted into subdivisions with some small shopping centers and school yards. Based on this, approximately 20% of the area is paved and 80% is grassed. This 295.806 acre area has an average runoff coefficient of 0.42. The assumed infiltration amounts to about 19% of the rainfall. A large number of irrigation wells and wate to air air conditioning units feeding irrigation wells exists in this area. This flow has also been calculated. There are also numerous French

drain systems in this area that remove ground water perched above a layer of hardpan material. These systems drain into the storm sewer system.

Calculations showing these drainage rates are attached.

Mr. David Jones, Public Works Administrator, will be sending you a letter regarding the County acceptance of the sanitary sewage from this subdivision.

If we can be of any further assistance, please call on us.

Sincerely yours,

PBR ENGINEERS AND ASSOCIATES, INC.

Ernest M. Briel, Jr., P.E.
President

EMB:mll

Enclosure

ATTACHMENT 5(d) - 1

March 13, 1972

Mr. T. O. Gaillard
Chief, Operations Division
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36601

Dear Mr. Gaillard:

Reference is made to your Public Notice No. 72-3 dated January 7, 1972, relative to an application for a Corps of Engineers' Permit by The Grand Lagoon Company.

This office has reviewed the applicant's detailed plan of development and have determined that the proposed work will not have a significant effect on water quality. Therefore, we have no objections to the issuance of a Department of Army Permit for this work but urge the applicant make every effort to minimize damages to aquatic resources.

Sincerely yours,

John C. White
Director, Enforcement Division

Mr. T. O. Gaillard
Chief, Operations Division
U.S. Army Engineer District, Mobile
P.O. Box 2288
Mobile, Alabama 36601

Dear Mr. Gaillard:

Since writing you on March 13, 1972 concerning the plan of development proposed by The Grand Lagoon Company (PN 72-3), we have obtained more information relating to water quality conditions for this project which prompts us to submit additional comments for your consideration. 1-7-72

We understand that in addition to the navigation channels and marina facilities which appeared on your public notice, the development includes an interior canal system which extends approximately 2.5 miles into an upland area proposed for residential development. We have also learned that this canal system is essentially complete with the exception of three spur canals which are yet to be dredged.

Although the applicant plans to achieve secondary treatment of all domestic sewage, we are concerned over the water quality degradation which could result in the interior canals and which could eventually extend into the waters of Grand Lagoon. There are several factors which point out a potential problem in this area: (1) a long, deep, dead end canal; (2) limited tidal flushing; (3) a waste load from storm runoff. When added together these factors can accelerate eutrophication in the canal and result in excessive growths of aquatic vegetation, reduction of dissolved oxygen levels, odors, and eventually fish kills. As pointed out in the recent report prepared for the Board of Trustees of the Internal Improvement Fund entitled, "Report of Investigation of the

Environmental Effects of Private Waterfront Canals", these problems are commonplace in Florida and have been documented in a waterfront development near the Grand Lagoon.

Therefore, in order to minimize water quality degradation in the upland canal system, we recommend that the following conditions be made a part of the issued permit:

(1) Remaining spur canals be dredged to a depth of 5 feet mlw, extended to the location of the proposed streets, and connected to the main canal with box culverts.

(2) A silt barrier be used to contain turbidity and sedimentation from dredging operations.

We appreciate the opportunity to provide you with these comments.

Sincerely yours,

John C. White
Director, Enforcement Division

cc: U.S. Fish and Wildlife Service
Atlanta, Georgia

ATTACHMENT 6(c)

Ref: 4AEP:JWB

APR 5 1973

Colonel Emmett C. Lee, Jr.
District Engineer
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Lee:

The Environmental Protection Agency has completed its evaluation of the plans contained on Public Notice No. 72-0605, which advertised an application by ITT Community Development Corporation for a Department of the Army permit to construct a system of bulkheaded canals connecting with the Intracoastal Waterway, Flagler County, Florida.

As we pointed out in conferences with the applicant, members of your staff, and other interested conservation agencies, we are concerned over water quality degradation which will occur in the upland canal system. Our concern also extends into the area of water supply and the demands which the Palm Coast Development will have on existing sources of groundwater. Although we had originally intended to require a mathematical or hydraulic model to determine tidal flushing rates and water circulation patterns in the canals, discussions at the recent meeting in Jacksonville indicate that model studies will not be necessary. During the course of that meeting, Mr. John Barton, of ITT Community Development Corporation, acknowledged that tidal flushing and water circulation would not be sufficient to maintain water quality standards and that facilities would be made available to assure that standards are not violated. He further stated that the company would be willing to post a performance bond to assure that adequate funds were available to provide these facilities.

In light of the water resource problems which could occur as a result of the completion of the Palm Coast Development, we recommend that an EIS be prepared prior to the issuance of a Section 10 permit. Although we concur with the applicant that a model study is not necessary, we will want to evaluate plans for the system that will be constructed to maintain water quality standards prior to providing you with final

comments on this permit application. We will also want to study the adequacy of the performance bond, which the applicant proposes to purchase, in order to insure that it is sufficient to meet the cost of maintaining water quality standards.

We will defer providing you with further comments on this permit application until we have an opportunity to review the EIS, the contingency facilities, and other pertinent material.

Sincerely yours,

Original Signed By

Paul J. Traina
Director, Enforcement Division

cc: Regional Supervisor
Bureau of Sport Fisheries and Wildlife

bc: E. T. Heinen
Florida Liaison Planning Office

Barney Barnes
Florida Department of Pollution Control

4AE January 15, 1973

Quarterly Report - October 1, 1972 Through December 31, 1972

Mr. John Quarles
Assistant Administrator for Enforcement
and General Counsel

SUMMARY

The Enforcement Division Quarterly Report covering the period October 1, 1972 through December 31, 1972 is forwarded herewith.

ACTION

For your information.

BACKGROUND

Your April 13, 1972 memorandum.

Original Signed By:

John C. White
Director, Enforcement Division

Enclosure

4AEE:JHSargent/lw:1/15/73:rm 300:3506
bc: 4A
4AW(3)
4AC
4AT
4AS
4AB
4AM
4AEP(2)
4AE(2)
EPA Liaison (4)
Carl Eardley (2)

20-733 O - 73 - pt. 1A - 69

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER)

FOURTH QUARTER - 1972

I. ENFORCEMENT ACTIONS INITIATED OR CONCLUDED IN THE REPORTING PERIOD

A. 1. Abatement Commitments Negotiated

Name	Receiving	Nature of Discharge	Remarks
Glidden-Durkee Jacksonville, Fl	St. Johns	Organic chemicals	Company agreed to connect to city sewers and meet all limits proposed by EPA.
Diamond International Natchez, Ms	Mississippi River	Paper mill wastes	Company agreed to meet EPA limits by 1/1/74.
Reichhold Chemicals Charlotte, N. C.	McAlpine Creek	Organic chemical	Company agreed to meet EPA limits.
Piedmont Heat Treating Company Charlotte, N. C.	Charlotte Storm Sewer	Metallic wastes	Company agreed to meet EPA limits and cease discharge to public streams.
Fieldcrest Mills Eden, N. C.	Dan River	Textile wastes	Company agreed to meet EPA limits by 1/4/74
Fieldcrest Mills Laurel Hill, N.C.	Gum Swamp	Textile wastes	Company agreed to meet EPA limits by 1/4/74.
Dan River, Inc. Anderson, S. C.	Rocky River	Textile wastes	Company agreed to connect to city sewers by 3/1/73.
Colonial Board Co Shufibre Div Covington, Tn	Town Creek	Textile wastes	Company agreed to meet EPA special conditions by 1/1/76.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

A. 1. Abatement Commitments Negotiated (Con't)

Name	Receiving Stream	Nature of Discharge	Remarks
Kimberly Clark Memphis, Tn	Wolf River	Paper mill wastes	Company agreed to connect to Memphis sewer by 9/73.
Humko Products Memphis, Tn	Wolf River	Organic chemicals	Company connected to Memphis sewer system.
Tennessee River Pulp & Paper Counce, Tn	Tennessee River	Paper mill wastes	Company agreed to meet EPA limits by 7/2/73.
Poultry By-Products Garden City, Al	Mulberry Fork of the Little Warrior River	Chicken processing wastes	Abatement commitment letter dated 10/30/72 indicates company is in full compliance with EPA's previous recommendations including rendering inoperative the company's emergency by-pass line.
City Dump Waynesboro, Tn	Tennessee River	PCBs, Trash garbage	Clean-up effort underway.

A. 2. Abatement Commitments in the Negotiation Stage

Pursuant to Guidance from Headquarters immediately after enactment of the 1972 Amendments Region IV Enforcement notified all companies of whom ACLs had been requested that we were no longer pursuing that program, but would be contacting them in the near future to arrange meetings with them and the State agencies to negotiate permit conditions based largely on the ACL conditions. This is currently being done by the Permits Branch with Enforcement Branch participation.

B. Refuse Act Civil Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
*U. S. Steel Fairfield Complex Fairfield, Al	Steel Waste	Refuse Act	Opossum Creek	4/71	6/14/71	Consent Decree 10/16/72

C. Refuse Act Criminal Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Patrick Petroleum Company et al Choctaw Bluff, Al Spill - 7/23/72	Crude oil and use of chemical dispersant("Kem-Lube")	Refuse Act	Alabama River	11/21/72	-	U. S. Attorney of Southern District of Alabama indicated case would be filed during the Middle part of January.
Automotive Disposal Corporation Jacksonville, Fl	Shredded metal	Refuse Act	Trout River	8/25/72	9/11/72	Guilty Plea - fined $1000 on December 5.
Mecklenburg County Abbatoir Charlotte, N. C.	Slaughterhouse waste	Refuse Act non-filer	Long Creek to Catawba River	1/21/72	6/14/72	Case filed 6/14/72. November 16, 1972 - Nolo Contendere $2,500 fine suspended with probation - case closed.
N. C. Consolidated Hide Goldsboro, N. C.	Tannery wastes	Refuse Act	Little River to Neuse River	5/5/72		Abatement accomplished and prosecution no longer required. Case closed.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

C. Refuse Act Criminal Cases (Con't)

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
E. M. Carter Packing Company Richland, N. C.	Slaughterhouse wastes	Refuse Act	New River	5/5/72	-	Permit applied for with conditions satisfactory with U. S. Attorney office. Case closed.
Chemical Leaman Tank Lines Charlotte, N. C.	Chemical wastes	Refuse Act	Little Sugar to Catawba	5/24/72	6/15/72	Case filed 6/15/72. Nov. 17, 1972 - nolo contendere
Central Transport Company Charlotte, N. C.	Chemical wastes	Refuse Act	Long Creek to Catawba River	5/24/72	6/15/72	Case filed 6/15/72. November 7, 1972 - nolo contendere $2,500 fine suspended with probation. Case closed.
Roberts Commercial Galvanizing Co. Fultondale, Al	High concentrations of zinc	Refuse Act	Tributary of Five Mile Creek & Tributary of Locust Fork of Black Warrior River	12/29/72	-	Due to resignation of Assistant U. S. Attorney handling pollution case in Birmingham, new assistant hasn't had time to review matter.

D. 180-Day Notices

None

E. Section 11 Actions

Name and Date	Receiving Stream	Type of Discharge	Type of Action	Date Referred	Remarks
Cavalier Towing, Inc. Memphis, Tn Ohio River spill near Owensboro, Kentucky	Ohio River	Crude oil	11(b)(5)	12/9/72	Coast Guard has under review for assessment of civil penalty.
Mary R. Towing Co., Inc/Leboeuf Brothers Towing Co.,Inc. Houma, Louisiana	Ohio River	Diesel fuel	11(b)(5)	12/9/72	Coast Guard has under review for assessment of civil penalty.
Patrick Petroleum Co. et al Choctaw Bluff, Al	Alabama River	Crude oil	11(b)(5) civil penalty FWPCA	USCG 9/29/72	Coast Guard declined to proceed 11/6/72. U. S. Attorney will file under 11(b)(4) in mid-January 1973.
Standard Oil Co. Atlanta,Ga	Chattahoochee River	Diesel fuel	11(b)(5)	12/29/72	Awaiting U. S. Coast Guard response.
Standard Oil Co. Atlanta, Ga	Lake Allatoona	Diesel Fuel	11(b)(5)	12/29/72	Awaiting U. S. Coast Guard response.
Carolina Aluminum Company Winston-Salem, N.C.	Chowan River	Oil	311(b)(6)	11/19/72	Awaiting comments as of 12/31/72.
Carolina Aluminum Company Winston-Salem,N.C.	Chowan River	Mineral spirits	311(b)(6)	11/19/72	Awaiting comments as of 12/31/72.
Electric Wiring, Inc. Conover, N.C.	Lyle Creek	Oil	311(b)(6)	11/19/72	Awaiting comment as of 12/31/72.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

E. Section 11 Actions (Con't)

Name and Date	Receiving Stream	Type of Discharge	Type of Action	Date Referred	Remarks
Home Oil & Gas Co. Mt. Airy, N.C.	Old Town Creek	Oil	311(b)(6)	11/19/72	Awaiting comments as of 12/31/72.
M & M Tank Line Moyock	Currituck Sound	Oil	311(b)(6)	11/19/72	Awaiting comments as of 12/31/72.
Patrick Petroleum Co. et al Choctaw Bluff, Al Spill - 7/23/72	Alabama River	Crude oil	11(b)(4)	11/21/72	Matter was referred on 9/29/72 to U. S. Coast Guard (8th District) for 11(b)(5) hearing. On 11/6/72, U. S. Coast Guard declined to proceed under this section for reasons not agreed to by EPA.

F. Other Actions

None

II. REPORT ON STATUS OF PAST UNSETTLED ACTIONS

A. Civil Refuse Act Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Olin Corporation Brandenburg, Ky.	bis ether	Refuse Act	Ohio River	--	--	New Act prevents use of Refuse Act in this case. Will be handled under permit program.
*Alabama By-Products Tarrant, Al	Coke waste	Refuse Act	Five Mile Creek	4/71	6/18/71	Enforcement Division and U. S. Attorney continuing negotiations with company toward consent settlement. The next consent negotiation meeting is scheduled for late January 1973.
*U. S. Pipe and Foundry North Birmingham Complex Birmingham, Al	Steel waste	Refuse Act	Five Mile Creek	4/71	6/16/71	Last draft of EPA's proposed consent decree sent to company's counsel for approval. A signed agreement is anticipated by early January 1973.
*McWane Cast Iron Pipe Company Birmingham, Al	Iron waste	Refuse Act	Tributary to Village Creek	4/71	6/16/71	Enforcement Division and U. S. Attorney continuing negotiations with company toward consent settlement. The next consent negotiation meeting is scheduled for late January 1973.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

II. REPORT ON STATUS OF PAST UNSETTLED ACTIONS (Con't)

A. Civil Refuse Act Cases (Con't)

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
*Nashville Bridge Co. Bessemer, Al	Iron waste	Refuse Act	Tributary to Village Creek	4/71	6/16/71	EPA proposed "Stipulation for Dismissal" submitted to company on 12/13/72 for signature. Determination by company is expected soon.
*Koppers Co., Inc. Birmingham, Al	Coke waste	Refuse Act	Tributary to Opossum Creek	4/71	6/22/72	EPA unable to negotiate with company. U. S. Attorney is preparing interrogatories in this case.
Whittaker Corp. - City of Memphis Memphis, Tn	Textile wastes		Mississippi River	6/19/72	8/18/72	EPA and U. S. Attorney have had five meetings with company and city. Consent Decree in final negotiation stages. Answer due from company.
Clear Creek Coal Co. Monterey, Tn	Acid		Buch Branch Obey River	5/16/72		Information from investigation passed to U. S. Attorney who agrees with EPA that independent intervening acid sources cloud causal element. Complete survey of area would be necessary for Refuse Act prosecution. 1972 Amendments may provide better tool.

II. Report on Status of Past Unsettled Actions (Con't)

A. Civil Refuse Act Cases (Con't)

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Phillips Boatyard & Lawrence Owens Wanchess, N. C.	Dredge & fill refuse	Refuse Act	Croatan Sound	8/7/72	8/25/72	Defendant restrained - pending.
Sam Beacham Kitty Hawk, N. C.	Dredge & Fill refuse	Refuse Act	Currituck Sound	8/7/72	8/25/72	Case filed 8/25/72 Ninety-day injunction issued 9/1/72, extended to 2/5/73
Owen Fulford Harkers Island, N.C.	Dredge & fill refuse	Refuse Act	Core Sound	8/7/72	8/25/72	Defendant restrained - pending.
Sullivan's Island S. C.	Trash, solid waste	Refuse Act	Intracoastal Waterway	6/14/72		Due to turnover in personnel of U. S. Attorney's office, scheduled meeting was cancelled. U. S. Attorney will contact us to meet when he can find time.
Bona Allen, Inc. Buford, Ga.	Tannery waste	Refuse Act	Black Branch Tributary of Suwanee Creek	6/21/71	9/2/71	Case filed 9/2/71. 6/7/72 - Motion granted to delay hearing pending outcome of appeal of another case relating to navigability of this stretch of the river.
American Cyanamid Savannah, Ga	Acid	Refuse Act	Savannah River	6/16/72		Filing of the case was obviated by tentative agreement of company to arrange to have acid wastes used by another company to make gypsum. EPA will continue surveillance over company

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

B. Criminal & Non-Filer Refuse Act Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
American Petrofina Co. Natchez, Ms	Oil & salt water	Refuse Act	Mississippi River	6/2/72		Under review by U. S. Attorney.
Del Oil & Gas Corp. Natchez, Ms	Salt water	Refuse Act	Mississippi River	6/6/72		Under review by U. S. Attorney.
J. C. Keeter Realty Company Atlantic Beach, N.C.	Dredge and fill refuse	Refuse Act	Bogue Sound	8/7/72		Under review by U. S. Attorney.
The Leisure Group West Point, Ms	Chromium, oil and alkaline wastes	Refuse Act	Town Creek	5/19/72		U. S. Attorney declined prosecution due to evidence problems.
Cities Service Ft. Meade, Fl	Phosphate wastes	Refuse Act	Peach River	12/31/71	5/5/72	Continued pending completion of several state civil actions.
Collier Development Corp. Naples, Fl	Garbage	Refuse Act	Tributary to Cocohatchee River	7/26/72		Under review by U. S. Attorney. Additional evidence submitted. No action as yet by the Department of Justice.
Lefler Concrete Block Company Charlotte, N. C.	Arsenic	Refuse Act	Stewart Creek to Catawba River	5/24/72	6/15/72	November 17, 1972 - pleaded not guilty. Trial recessed until later date.

C. 180-Day Notices

Name and Date	Receiving Stream	Type of Discharge	Remarks
Yazoo City, Ms	Mississippi River	Municipal waste	Informal hearing 7/27/72. Plans and specifications due 9/1/72, construction to begin 11/15/72, begin operation 11/15/73. Plans approved construction due to begin.
Natchez, Ms	Mississippi River	Municipal waste	Informal hearing 7/26/72. Plans and specifications due 9/1/72. Construction to begin 10/30/72, begin operation by 3/14/73. Two months behind schedule.
W. R. Grace Co. Owensboro, Ky	Ohio River	Paper and chemical waste	Informal hearing 8/1/72. Treatability study submitted 10/1/72. On schedule.
Henderson, Ky	Ohio River	Municipal waste	Informal hearing 8/1/72. Preliminary plans and specifications submitted to State 11/1/72. On schedule.
West Point, Ky	Ohio River	Municipal waste	Informal hearing 8/2/72. Preliminary engineering reported submitted to State 11/15/72. On schedule.
Ashland Oil, Inc. Ashland, Ky. 9/22/71	Big Sandy River	phenols	Notice issued for violation of West Virginia's and Kentucky's water quality standards on phenols discharge to the Big Sandy River. Company and Enforcement Division have had two hearings and have agreed on a compliance schedule for installation of a biological treatment system. This treatment will substantially reduce phenolic discharge to the river. It is likely that further reductions will be imposed on the company as soon as oil refinery guidelines are established. The foregoing treatment system will be completed in late 1974. The additional phenol reduction if necessary, will be required by July '76.

180-DAY NOTICES

Name and Location of Municipality	Receiving Water	Pollution Problem	Date of Letter	Results or Status
City of Atlanta, Ga	Chattahoochee River	Municipal waste	12/9/70	Informal hearing 1/2/71 - three plants ordered to complete construction by 4/73. On schedule.
Ashland Oil & Refining Company Ashland, Ky	Big Sandy River	Phenols	9/22/71	Informal hearing 8/6 and 9/22/71. Although agreement reached on a construction schedule calling for completion by 11/74, no agreement yet on effluent limitation for phenols awaiting performance of new treatment plant.
Yazoo City, MS	Yazoo River	Municipal waste	6/12/72	Informal hearing 7/27/72. Plans and specifications due 9/1/72, construction to begin 11/15/72, begin operation 11/15/73. Plans approved, construction due to begin.
Natchez, MS	Mississippi River	Municipal waste	6/12/72	Informal hearing 7/26/72. Plans and specifications due 9/1/72. Construction to begin 10/30/72 begin operation by 3/14/73. Two months behind schedule.
W.R. Grace Co. Owensboro, KY	Ohio River	Paper and chemical waste	6/29/72	Informal hearing 8/1/72. Treatability study submitted 10/1/72. On schedule.
Henderson, KY	Ohio River	Municipal waste	6/26/72	Informal hearing 8/1/72. Preliminary plans and specifications submitted to State 11/1/72. On schedule.
West Point, KY	Ohio River	Municipal waste	6/26/72	Informal hearing 8/2/72. Preliminary engineering report submitted to State 11/15/72. On schedule.
Knoxville, TN	Tennessee River	Municipal waste	8/10/72	Informal hearing 9/7/72. Preliminary plans and specifications due 2/1/73.

180-DAY NOTICES

Name and Location of Municipality	Receiving Water	Pollution Problem	Date of Letter	Results or Status
Cities Service Corp. Copperhill, TN	Ocoee River	Acid mine drainage and silt	9/29/72	Informal hearing 11/15/72. Next scheduled compliance date - 6 months hence.
Bogalusa, La	Pearl River	Municipal waste	7/21/71	Program has been undertaken by Region VI when regional boundaries were realigned.

C. 180-Day Notices (Con't)

Name and Date	Receiving Stream	Type of Discharge	Remarks
Cities Service Corp. Copperhill, Tn.	Ocoee River	Acid mine drainage and silt	Informal hearing 11/15/72. Next scheduled compliance date - 6 months hence.

D. Section 11 Actions

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Ainsworth's Bentonia Oil Fields Yazoo County, Ms	Oil spills(2)	11(b)(5)	Big Black River	3/15/72	--	2 cases referred to U. S. Coast Guard under 11(b)(5). Civil penalty assessed in one and hearing set for 1/3/73. U. S. Coast Guard referred second case to U. S. Attorney for Refuse Act - under review.
Volunteer Asphalt Co. Knoxville, Tn.	Oil	11(b)(4)	Ft. Loudon Reservoir and Tennessee River	9/22/72		Civil penalty of $1000 assessed by U. S. Coast Guard, hearing pending. Will refer to U. S. Attorney under 11(b)(4) after U. S. Coast Guard matter closed.
Infinger Transportation Company Charleston Heights, South Carolina	Oil		Boon's Creek	9/22/72 (U. S. Coast Guard) 11/27/72 (U. S. Attorney)		U. S. Coast Guard held administrative hearing and found discharge was not "Knowing." U. S. Attorney had previously declined the 11(b)(4) prosecution. We have asked him to reconsider.

D. Section 11 Actions (con't)

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
B & R Transport Company Rutherfordton, N.C.	Oil		Broad River	9/29/72 (U.S. Coast Guard) 9/29/72 (U. S. Attorney)		Under review by U. S. Attorney. Coast Guard has requested further information.

E. Other Actions

1. Enforcement Conferences

(a) Escambia River

A Bay recovery study has been initiated by the Region IV,S & A Division. American Cyanamid & Air Products have not complied with conference recommendations. Monsanto and others in substantial compliance

(b) Perdidc Bay

Monitoring of progress on conference recommendations continues. Sources in substantial compliance. Fl has proceeded against St. Regis for further reduction of BOD and color.

(c) Dade County

EPA has approved interim plan, received environmental assessment and is proceeding with EIS on North, Central and South Dade County projects. Completion scheduled for '76.

(d) Middle Savannah River

State preparing a regional planning concept for the Horse Creek Valley, due 12/72. Monitoring compliance with conference recommendations.

III. Planned Accomplishments for the 1st Quarter 1973

Continue assessment of each State's present deficiencies in terms of achieving the State program elements necessary for participation in the NPDES pursuant to the regulations promulgated December 22, 1972.

Offer our assistance to each State in analyzing their present statutes and making suggestions as to what kind of amendments will be required to comply with the above referenced regulations.

Provide assistance to Permit Branch in negotiating permit conditions with applicants.

Review legal sufficiency of permits proposed to be issued by States having interim authorization.

Continue monitoring compliance with Enforcement Conference recommendations in Dade County, Escambia Bay, Perdido Bay and Middle Savannah River.

As they occur expeditiously process and refer oil spill cases under §311(b)(5) and (6) and such other fortuitous discharges as may be suitable for referral under the Refuse Act. (Anticipate 25-30 oil spills.)

Continue to assist U. S. Attorneys in negotiations toward consent decree in the civil Refuse Act cases and in preparation for trial and trial of criminal Refuse Act cases listed herein.

Continue to provide assistance to EIS staff in preparing EISs.

ATTACHMENT 11(a) - 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Quarterly Report - January 1, 1973 Through March 31, 1973

DATE: April 13, 1973

FROM: 4AE

TO: Assistant Administrator for Enforcement and General Counsel

SUMMARY

The Enforcement Division Quarterly Report covering the period January 1, 1973 through March 31, 1973 is forwarded herewith.

ACTION

For your information.

BACKGROUND

Your April 13, 1972 memorandum.

Paul J. Traina
Director
Enforcement Division

Enclosure

EPA Form 1320-6 (Rev. 6-72)

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER)

FIRST QUARTER - 1973

1100

I. ENFORCEMENT ACTIONS INITIATED OR CONCLUDED IN THE REPORTING PERIOD

A. NPDES PERMITS ISSUED DURING 1ST QUARTER (JAN, FEB, MAR) AND PROJECTED PUBLIC NOTICE ISSUANCE SECOND QUARTER

Name & Location	Receiving Stream	Nature of Waste	DATE		
			Public Notice	Hearing	Issued
GEORGIA					
William L. Bonnell Co. Newnan, Georgia	Mineral Springs Branch	Metals	1/19/73	2/27/73	3/15/73
Babcock & Wilcox Co. Augusta, Georgia	Savannah River	Solids	1/19/73	2/27/73	3/15/73
Cities Service Co. Augusta, Georgia	Butler Creek	Chemical Waste	1/19/73	2/27/73	3/15/73
Continental Can Co., Inc. Port Wentworth, Georgia	Savannah River	BOD & Solids	1/19/73	2/27/73	3/15/73
Delta Airlines Atlanta, Georgia	Flint River	Metals	1/19/73	2/27/73	3/15/73
E. I. DuPont Augusta, Georgia	Butler Creek	Inorganic Solids	1/19/73	2/27/73	3/15/73
S. C. Electric & Gas Co. Martinez, Georgia	Stevens Creek	Thermal	1/19/73	2/27/73	3/15/73
Southwire Company, Wire Plant Carrollton, Georgia	Buffalo Creek	Heavy Metals	1/19/73	2/27/73	3/15/73
Franklin Aluminum Co. Franklin, Georgia	Hillabahatchee Creek	Metals	1/19/73	2/27/73	3/15/73
Continental Can Co. Augusta, Georgia	Spirit Creek	BOD & Solids	1/19/73	2/27/73	3/15/73
Allied Chemical Brunswick, Georgia	Purvis Creek	Inorganic Chemical & Mercury	1/19/73	2/27/73	3/15/73

Name & Location	Receiving Stream	Nature of Waste	DATE		
			Public Notice	Hearing	Issued
Georgia Kraft Co. Macon, Georgia	Ocmulgee River	BOD & Solids	1/19/73	2/27/73	3/15/73
Great Northern Paper Co. Cedar Springs, Georgia	Chattahoochee River	BOD & Solids	1/19/73	2/27/73	3/15/73
Interstate Paper Co. Riceboro, Georgia	Riceboro Creek	BOD & Solids	1/19/73	2/27/73	3/15/73
Monsanto Co. Augusta, Georgia	Butler Creek	Chemical Inorganic	1/19/73	2/27/73	3/15/73
Olin Corporation Augusta, Georgia	Savannah River	Inorganic Chemical & Mercury	1/19/73	2/27/73	3/15/73
Southwire Co., Copper Div. Carrollton, Georgia	Buffalo Creek	Metals	1/19/73	2/27/73	3/15/73
Union Camp Corp. Savannah, Georgia	Savannah River	BOD & Solids	1/19/73	2/27/73	3/15/73
Union Camp Corp. Savannah Georgia	Savannah River	Boiler Blowdown	1/19/73	2/27/73	3/15/73
MISSISSIPPI					
Midsouth Packers, Inc. Tupelo, Mississippi	Town Creek	BOD & Solids	1/20/73	2/22/73	3/16/73
St. Regis Pulp & Paper Corp. Monticello, Mississippi	Pearl River	BOD & Solids	1/20/73	2/22/73	3/16/73

Name & Location	Receiving Stream	Nature of Waste	DATE		
			Public Notice	Hearing	Issued
Miss. Power & Light Greenville, Mississippi	Mississippi River	Thermal	1/20/73	2/22/73	3/16/73
Diamond National Corp. Natchez, Mississippi	Mississippi River	BOD & Solids	1/20/73	2/22/73	3/16/73
Filtrol Corp. Jackson, Mississippi	Pearl River	Acidity, TDS	1/20/73	2/22/73	3/16/73
International Paper Co. Natchez, Mississippi	Mississippi River	BOD & Solids	1/20/73	2/22/73	3/16/73
International Paper Co. Vicksburg, Mississippi	Ballground Creek	BOD & Solids	1/20/73	2/22/73	3/16/73
Corchem, Inc. Pascagoula, Mississippi	Mississippi Sound	Solids	1/20/73	2/22/73	3/16/73
Collingswood Poultry Collins, Mississippi	Okatoma Creek	BOD & Solids	1/20/73	2/22/73	3/16/73
Hernando Packing Co. Hernando, Mississippi	Mussacuna Creek	BOD & Solids	1/20/73	2/22/73	3/16/73
SOUTH CAROLINA					
Bowaters-Carolina Corp. Catawba, South Carolina	Catawba River	BOD & Solids	2/6/73	3/8/73	3/16/73
Kimberly Clark Corp. Beech Island, South Carolina	Savannah River	BOD & Solids	2/6/73	3/8/73	3/16/73

Name & Location	Receiving Stream	Nature of Waste	DATE		
			Public Notice	Hearing	Issued
General Electric Florence, South Carolina	Jefferies Creek	Metal	2/6/73	3/8/73	3/16/73
Springs Mills, Inc. Grace Finishing Plant Lancaster, South Carolina	Cane Creek	Textile Waste	2/6/73	3/8/73	3/16/73
South Carolina Industries Florence, South Carolina	Pee Dee River	BOD & Solids	2/6/73	3/8/73	3/16/73
Fiber Industries Greenville, South Carolina	Laurel Creek	Nylon Waste	2/6/73	3/8/73	3/16/73
Fiber Industries Palmetto, South Carolina	Black Creek	Nylon Waste	2/6/73	3/8/73	3/16/73
E. I. DuPont de Nemours Florence, South Carolina	Buckley Creek	BOD & Solids	2/6/73	3/8/73	3/16/73
Carotell Paperboard Corp. Taylors, South Carolina	Enoree River	BOD & Solids	2/6/73	3/8/73	3/16/73
Olympia Knitting Mills Switzer, South Carolina	South Tyger River	Yarn & Fabric	2/6/73	3/8/73	3/16/73
General Electric Greenville, South Carolina	Rocky Creek	Blowdown	2/6/73	3/8/73	3/16/73

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

B. Refuse Act Civil Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
U.S. Pipe & Foundry Birmingham, Al	Steel Waste	Refuse Act	Five-Mile Creek	4/71	6/16/71	Consent Decree 1/5/73

C. Refuse Act Criminal Cases

Robinson Freight Line, Inc. Knoxville, Tn	Sulfuric acid in nature of alum	Refuse Act	Ocoee River	2/12/73		U. S. Attorney verbally declined prosecution 3/19/73 EPA still negotiatin; for prosecution.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

D. Section 311 Actions

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Infinger Transportation Co. Charleston Heights, South Carolina	Oil		Boon's Creek	9/22/72 (U.S. Coast Guard 11/27/72 (U.S. Attorney)		U. S. Coast Guard held administrative hearing and found discharge was not "knowing." U. S. Attorney had previously declined the 311(b)(4) prosecution. We asked him to reconsider and he again declined.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

Section 311 Actions

Name and Date	Receiving Stream	Type of Discharge	Type of Action	Date Referred	Remarks
Blalock Hauling Co. Jonesboro, Ga.	Blue John Creek	Fuel oil	311(b)(6)	3/13/73	Company assessed a fine of $5,000 on 3/23/7 Under review.
Fannin County Blue Ridge, Ga.	Tributary to Toccoa River	Tar, Oil	311(b)(6)	1/11/73	2/5/73, assessed fine of $5,000. EPA recommended nominal fine.
Standard Oil Co. Atlanta, Ga.	Woodall Creek	Diesel fuel	311(b)(6)	11/29/72	2/9/73 no penalty, not "knowing" discharge EPA disagreed.
Standard Oil Co. Atlanta, Ga.	Lake Allatoona	Diesel fuel	311(b)(6)	11/29/72	2/9/73, no penalty - not "knowing" discharg EPA concurred.
Otis Ainsworth Laurel, Ms.	Walesheba Creek & Big Black River	Crude oil	311(b)(6)	3/15/72	Hearing held 1/4/73, company fined $3,000
Mary R. Towing Co. Inc/Leboeuf Bros. Towing Co., Inc. Houma, La	Ohio River	Diesel fuel	311(b)(5)	12/9/72	Coast Guard declined to proceed pursuant to a finding that the spill was not knowingly - case closed.
Volunteer Asphalt Knoxville, Tn	Ft. Loudon	Oil	311(b)(4)	9/22/72	Paid $1,000 fine. Case closed.

II. REPORT ON STATUS OF PAST UNSETTLED ACTIONS

A. Civil Refuse Act Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
*Alabama By-Products Tarrant, Al	Coke Waste	Refuse Act	Five-Mile Creek	4/71	6/18/71	The last version of EPA's consent decree is being prepared for presentation to company at meeting scheduled for 4/5/73.
*McWane Cast Iron Pipe Co. Birmingham, Al	Iron Waste	Refuse Act	Tributary 4/71 Village Creek		6/16/71	The last version of EPA's consent decree is being prepared for presentation to company at meeting scheduled for 4/6/73.
*Nashville Bridge Co. Bessemer, Al	Iron Waste	Refuse Act	Tributary 4/71 Village Creek		6/16/71	Company has not responded to EPA's proposed "stipulation for dismissal" previously submitted to company.
*Koppers Co., Inc. Birmingham, Al	Coke Waste	Refuse Act	Tributary 4/71 Opossum Creek		6/22/71	EPA unable to negotiate with company. U.S. Attorney has prepared interrogatories which he expects to send by early April.

II. REPORT ON STATUS OF PAST UNSETTLED ACTIONS (Con't)

A. Civil Refuse Act Cases (Con't)

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Whittaker Corp. City of Memphis Memphis, Tn	Textile Wastes	Refuse Act	Mississippi River	6/19/72	8/18/72	Consent decree signed and submitted to court 3/9/73. Decree provides final date for abatement as 7/74.
Phillips Boatyard & Lawrence Owens Wanchess, N.C.	Dredge & fill refuse	Refuse Act	Croatan Sound	8/7/72	8/25/72	Defendant restrained - pending.
Sam Beacham Kitty Hawk, N.C.	Dredge & fill refuse	Refuse Act	Currituck Sound	8/7/72	8/25/72	Case filed 8/25/72 ninety-day injunction issued 9/1/72, extended to 2/5/73.
Owen Fulford Harkers Island, N.C.	Dredge & fill refuse	Refuse Act	Core Sound	8/7/72	8/25/72	Defendant restrained - pending.
Sullivan's Island S.C.	Trash, solid waste	Refuse Act	Intracoastal Waterway	6/14/72		Due to personnel turnover scheduled meeting was cancelled. U.S. Attorney will contact us when he has time.

II. REPORT ON STATUS OF PAST UNSETTLED ACTIONS (Con't)

B. Criminal and Non-Filer Refuse Act Cases

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
American Petrofina Co. Natchez, Ms	Oil & salt water	Refuse Act	Mississippi River	6/2/72		Under review by U. S. Attorney.
Del Oil & Gas Corp. Natchez, Ms	Salt water	Refuse Act	Mississippi River	6/6/72		Under review by U. S. Attorney.
J. C. Keeter Realty Co. Atlantic Beach, N. C.	Dredge & fill refuse	Refuse Act	Bogue Sound	8/7/72		Under review by U. S. Attorney.
Cities Service Ft. Meade, Fl	Phosphate wastes	Refuse Act	Peace River	12/31/71	5/5/72	Continued pending completion of several state civil actions.
Collier Development Corp. Naples, Fl	Garbage	Refuse Act	Tributary Cocohatchee River	7/26/72		Under review by U. S. Attorney. Additional evidence may be requested.
Lefler Concrete Block Co. Charlotte, N. C.	Arsenic	Refuse Act	Stewart Creek to Catawba River	5/24/72	6/15/72	January 22, 1973 trial held - recessed until later date for oral arguments.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER)(Con't)

II. REPORT ON STATUS OF PAST UNSETTLED ACTIONS (Con't)

B. Criminal and Non-Filer Refuse Act Cases (Con't)

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Roberts Commercial Galvanizing Co. Fultondale, Al	High concentrations	Refuse Act	Tributary of Five-Mile Creek and tributary of Locust Fork of Black Warrior River	12/29/72		Due to cease and desist order issued by Alabama Water Improvement Commission, U. S. Attorney has decided to withhold Federal suit while awaiting State action.
Patrick Petroleum Company et al Choctaw Bluff, Al Spill - 7/23/72	Crude oil & use of chemical dispersent (Kem-Lube)	Refuse Act	Alabama River	11/21/72	3/12/73	Entered a plea of not guilty, jury trial requested tentative trial date late May.

C. 180-Day Notices

Name and Date	Receiving Stream	Type of Discharge	Remarks
Ashland Oil & Refinery Co. Ashland, Ky.	Big Sandy River	Phenols	Informal hearing 8/6 and 9/22/71. Although agreement reached on a construction schedule calling for completion by 11/74, no agreement yet on effluent limitation for phenols awaiting performance of new treatment plant.
Natchez, Ms	Mississippi River	Municipal waste	Informal hearing 7/26/72. Plans and specifications due 9/1/72. Construction to begin 10/30/72 begin operation by 3/14/73. Two months behind schedule.
Yazoo City, Ms	Yazoo River	Municipal waste	Informal hearing 7/27/72. Plans and specifications due 9/1/72, construction to begin 11/15/72, begin operation 11/15/73. Plans approved construction due to begin.
W. R. Grace Co. Owensboro, Ky	Ohio River	Paper and chemical waste	Informal hearing 8/1/72. Treatability study submitted 10/1/72. On schedule.
Henderson, Ky	Ohio River	Municipal waste	Informal hearing 8/1/72. Preliminary plans and specifications submitted to State 11/1/72. On schedule.
West Point, Ky	Tennessee River	Municipal waste	Informal hearing 8/2/72. Preliminary engineering report submitted to State 11/15/72. On schedule.
Knoxville, Tn	Tennessee River	Municipal waste	Informal hearing 9/7/72. Preliminary plans and specifications due 2/1/73. On schedule.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

C. 180-Day Notices (Con't)

Name and Date	Receiving Stream	Type of Discharge	Remarks
Cities Service Corp. Copperhill, Tn	Ocoee River	Acid mine drainage and silt	Granted extension until 3/31/73 for submittal of Isabella Acid Storage plans and specifications. On schedule.

REGION IV - QUARTERLY ENFORCEMENT REPORT (WATER) (Con't)

D. Section 311 Actions

Name of Defendant	Nature of Discharge	Type of Action	Receiving Stream	Date Referred	Date Filed	Status
Ainsworth's Bentonia Oil Fields Yazoo County, Ms	Oil spills(2)	311(b)(5)	Big Black River	3/15/73		Coast Guard hearing on 1/3/73 resulted in a $3,000 penalty assessment. Case referred by Coast Guard to U.S. Attorney. Still under review.
Ashland Oil, Inc. (Cavalier Towing) Near Owensboro, Ky	Crude oil	311(b)(5)	Ohio River	12/9/72		Coast Guard assessed a $1,000 penalty. Waiting to see if company request a hearing.
Patrick Petroleum Co. et al Choctaw Bluff, Al	Crude oil	311(b)(5)	Alabama River	11/21/72	2/28/73	Defendants pleaded not guilty at arraignment on 3/12/73. Jury trial is set for late 5/73.
B & R Transport Company Rutherfordton, N.C.	Oil		Broad River	9/29/72 (U.S.Coast Guard)		Under review by U. S. Attorney and Coast Guard.
M & M Tank Lines Moyock, N.C.	Diesel fuel		Tuu's Creek to Currituck Sound	1/3/73		Under review by U. S. Attorney and Coast Guard.

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:. Section 311 Actions

Name and Date	Receiving Stream	Type of Discharge	Type of Action	Date Referred	Remarks
Ashland Oil & Transportation Co. Salyersville, Ky.	Nat Creek Near River, Ky.	Crude oil	311(b)(6)	3/22/73	Coast Guard has under review for assessment of civil penalty
Broyhill Industries, Inc. Lenoir, N. C.	Lower Creek (Catawba River)	Oil	311(b)(6)	3/7/73	Under review by USCG.
Royster Transport Co., Inc. Shelby, N. C.	Dollar Branch	Oil	311(b)(6)	3/20/73	Under review by USCG.
Ashland Oil, Inc. Ashland, Ky.	Big Pitman Creek	Crude oil	311(b)(5) 311(b)(6)	1/23/73	Coast Guard assessed penalty of $1,000 by letter dated 3/21/73. 311(b)(5) under review by U. S. Attorney and Department of Justice.
Ashland Oil, Inc. Ashland, Ky.	Panther Creek	Crude Oil	311(b)(5) 311(b)(6)	1/23/73	Coast Guard assessed penalty of $1,000 by letter dated 3/8/73. 311(b)(5) under review by U. S. Attorney and Department of Justice
Scurlock Oil Co. Bovina, Ms. (Houston, Tx.)	Big Black River		311(b)(6)	3/13/73	Awaiting response from Coast Guard.
M & M Tank Lines Inc. Leland, N. C.	Cape Fear River	Fuel oil	311(b)(5) 311(b)(6)	3/19/73	Under review by USCG.
Home Oil & Gas Co. Mt. Airy, N. C.	Town Creek	Diesel fuel	311(b)(6)	1/3/73	Assessed fine of $1,500. On 3/5/73 fine paid. Case closed.
Electric Wiring, Inc. Hickory, N. C.			311(b)(6)	1/3/73	Assessed fine of $1,000. On 3/5/73 fine paid. Case closed.
Carolina Aluminum Oil Co. Winton, N. C.	Tributary to Chowan River	Mineral spirit	311(b)(6) 311(b)(c)	1/3/73	Declined due to lack of evidence that oil entered water.

Section 311 Actions

Name and Date	Receiving Stream	Type of Discharge	Type of Action	Date Referred	Remarks
Davis Transportation Company New Bern, N. C.	Moccasin Creek	Diesel fuel	311(b)(6)	1/19/73	Letter of explanation from Company resulted in 4/3/73 USCG letter with $500 penalty.
Barringer Oil Co. Lenoir, N. C.	Celia Creek	Kerosene	311(b)(6)	1/31/73	On March 8, 1973, company was assessed a fine of $2,500. Under review by USCG.
Duke Power Co. Charlotte, N.C.	Lake Norman	Light turbine oil	311 (b)(6)	1/19/73	Company assessed a fine of $2,500 on 3/9/73. Under review by USCG.
Celanese Corp. Charlotte, N.C.	Tributary to Sugar Creek	Fuel oil	311(b)(6)	1/19/73	Warning letter 2/8/73.
Geo A. Rheman Co.,Inc. Charleston, S.C.	West fork French Broad	Fuel oil	311(b)(6)	3/15/73	Under review by USCG.
Fleet Transport Nashville, Tn.		Diesel fuel		1/23/73	3/14/73 letter notifying Company of investigation.
Arnold Engineering Dev. Center Tullahoma, Tn.	Woods Reservoir	Hydraulic fluid			Verbal reprimand to Commander with explanation of holding in California v Davidson, etc.
Robinson Freight L Line Ducktown, Tn.	Ocoee River	Sulfuric acid			U. S. Attorney verbally declined prosecution 3/19/73. EPA still negotiating for prosecution.
Waxler Towing Co. Vicksburg, Ms.	Mississippi River	Oil	311(b)(6)	3/22/73	Under review by USCG.
Vest Towing Co. Greenville, Ms.	Mississippi River	Diesel fuel	311(b)(6)	3/28/73	Under review by USCG.

III. Planned Accomplishments for the 2nd Quarter 1973

Continue assessment of each State's present deficiencies in terms of achieving the State program elements necessary for participation in the NPDES pursuant to the regulations promulgated December 22, 1972.

Offer our assistance to each State in analyzing their present statutes and making suggestions as to what kind of amendments will be required to comply with the above referenced regulations.

Provide assistance to Permit Branch in negotiating permit conditions with applicants.

Review legal sufficiency of permits proposed to be issued by States having interim authorization.

Continue monitoring compliance with Enforcement Conference recommendations in Dade County, Escambia Bay, Perdido Bay and Middle Savannah River.

As they occur expeditiously process and refer oil spill cases under §311(b)(5) and (6) and such other fortuitous discharges as may be suitable for referral under the Refuse Act. (Anticipate 25-30 oil spills.)

Continue to assist U. S. Attorneys in negotiations toward consent decree in the civil Refuse Act cases and in preparation for trial and trial of criminal Refuse Act cases listed herein.

Continue to provide assistance to EIS staff in preparing EISs.

III. NPDES PERMITS PROPOSED FOR 2ND QUARTER (APR, MAY, JUN)

Name & Location	Receiving Streams	Nature of Waste	DATE		
			Public Notice	Hearing	Issued
ALABAMA					
Courtaulds North American, Inc. Axis, Alabama	Mobile River	Textile Waste	4/12/73		
Alabama Kraft Company Phenix City, Alabama	Chattahoochee	BOD & Solids	4/12/73		
Allied Paper Inc. Jackson, Alabama	Tombigbee River	BOD & Solids	4/12/73		
MacMillan Bloedel, Inc. Pine Hill, Alabama	Alabama River	BOD & Solids	4/12/73		
Container Corp. Brewton, Alabama	Conecuh River	BOD & Solids	4/12/73		
National Gypsum Mobile, Alabama	Mobile Bay	BOD & Solids	4/12/73		
Stone Container Mobile, Alabama	Three Mile Creek	BOD & Solids	4/12/73		
Monsanto Co. Guntersville, Alabama	Tennessee River	Organic Fibers	4/12/73		
Union Camp Corp. Montgomery, Alabama	Alabama River	BOD & Solids	4/12/73		

Name & Location	Receiving Stream	Nature of Waste	PROPOSED DATES Public Notice	Hearing	Issued
NORTH CAROLINA					
Holly Farms Poultry Hiddenite, North Carolina	Third Creek	Poultry Waste	5/1/73		
Champion International, Inc. Canton, North Carolina	Pigeon River	BOD & Solids	5/1/73		
Olin Corp. Pisgah Forrest, North Carolina	Davidson River	BOD & Solids	5/1/73		
Wright Chemical Co. Riegelwood, North Carolina	Livingston Creek	BOD	5/1/73		
Reichold Chemical, Inc. Charlotte, North Carolina	Alpine Creek	BOD, Solids & Ammonia	5/1/73		
Beaunit Corp. Nowell, North Carolina	South Fork Catawba River	BOD & Solids	5/1/73		
General Elec. Co. Hickory, North Carolina	Cline Creek	Metals	5/1/73		
Pharr Yarns McAdenville, North Carolina	South Fork Catawba River	BOD & Solids	5/1/73		
The Harshaw Chemical Co. Lowell, North Carolina	South Fork Catawba River	BOD & Solids	5/1/73		
Becker Sand & Gravel Co. Fayetteville, North Carolina	Cape Fear River	Solids	5/1/73		

Name & Location	Receiving Stream	Nature Of Waste	PROPOSED DATES: Public Notice	Hearing	Issued
Fieldcrest Mills, Inc. Laurel Hill, North Carolina	Gun Swamp Creek	BOD & Solids	5/1/73		
United Merchants & Mfg., Inc. Old Fort, North Carolina	Catawba River	BOD & Solids	5/1/73		
General Electric Co. Wilmington, North Carolina	N. E. Cape Fear River	Flourides & Ammonia	5/1/73		
American Thread Co. Marion, North Carolina	Line Kiln Creek	BOD & Solids	5/1/73		
Southern Mercerizing Co. Tyron, North Carolina	Vaughn Creek	BOD & Solids	5/1/73		
Cranston Print Work Co. Fletcher, North Carolina	French Broad River	BOD & Solids	5/1/73		
Mead Corp. Sylva, North Carolina	Scott Creek	BOD & Solids	5/1/73		
Federal Paperboard Riegelwood, North Carolina	Cape Fear River	BOD & Solids	5/1/73		
E. I. duPont de Nemours Co. Brevard, North Carolina	Little River	Oil & Grease	5/1/73		

Name & Location	Receiving Streams	Nature of Work	PROPOSED DATES		
			Public Notice	Hearing	Issued
KENTUCKY					
W. R. Grace Owensboro, Kentucky	Ohio River	BOD & Solids	5/15/73		
Western Kraft Corp. Hawesville, Kentucky	Ohio River	BOD & Solids	5/15/73		
Fleisehman Owensboro, Kentucky	Ohio River	BOD & Solids	5/15/73		
Glenmore, Dist. Owensboro, Kentucky	Ohio River	BOD & Solids	5/15/73		
Medley Owensboro, Kentucky	Ohio River	BOD & Solids	5/15/73		
FLORIDA					
St. Regis Paper Cantonment, Florida	Peridio Bay	BOD & Solids	6/1/73		
St. Regis Paper Jacksonville, Florida	St. Johns River	BOD & Solids	6/1/73		
Owens-Illinois Valdosta, Georgia	Withlacooche River	BOD & Solids	6/1/73		
Dade Co. Port Authority Miami, Florida	Miami River	Thermal	6/1/73		

Name & Location	Receiving Stream	Nature of Waste	PROPOSED DATE Public Notice	Hearing	Issued
Florida Power & Light Turkey Point, Florida	Card Sound	Thermal	6/1/73		
Florida Power & Light Miami, Florida	Miami River	Thermal	6/1/73		
Florida Power & Light Cutler, Florida	Biscayne Bay	Thermal	6/1/73		
Florida Power & Light Hutchinson, Florida	Atlantic Ocean	Thermal	6/1/73		
Buckeye Cellulose Perry, Florida	Fenholloway	BOD & Solids	6/1/73		
TENNESSEE					
Ferro Corp. Nashville, Tennessee	Cumberland River	Thermal	6/15/73		
Neuhoff Packing Co. Nashville, Tennessee	Cumberland River	BOD & Solids	6/15/73		
Tennessee River Pulp & Paper Counce, Tennessee	Tennessee River	BOD & Solids	6/15/73		
U.S.S. Agri-Chemicals Nashville, Tennessee	Cumberland River	Thermal	6/15/73		
Jervis Corp. Bolivar, Tennessee	Hatchie River	Metals-pH	6/15/73		

Name & Location	Receiving Stream	Nature of Waste	PROPOSED DATE		
			Public Notice	Hearing	Issued
Mid-Tenn. Paving Co. Dickson, Tennessee	Jones Creek	Solids	6/15/73		
Olin Conductors Chattanooga, Tennessee	Tennessee River	Metals & pH	6/15/73		
Union Camp Corp. Morristown, Tennessee	Sinking Fork Creek	BOD & Solids	6/15/73		
Kraft Foods Gallaton, Tennessee	Town Creek	Thermal	6/15/73		
Combustion Engineering Chattanooga, Tennessee	Tennessee River	Thermal	6/15/73		
American Oil Co. Chattanooga, Tennessee	Tennessee River	Solids & Oil	6/15/73		

ATTACHMENT 11(b) - 1

SUMMARY REPORT

VIOLATION OF SECTION 203 OF THE CLEAN AIR ACT

Removal/Tampering - Motor Vehicle Emission Control Device
Haney Chevrolet, Inc. - Orlando, Florida

On February 6, 1973 suit was filed in the United States District Court for the Middle District of Florida against Haney Chevrolet, Inc., Orlando, Florida. The complaint alleged that Haney Chevrolet had violated Section 203 of the Clean Air Act in that on or about August 16, 1972, the defendant (1) knowingly removed the original carburetor and its accompanying idle speed solenoid from a motor vehicle and installed a different carburetor without said idle speed solenoid attached, thereby rendering that device inoperative; (2) knowingly removed the drive belt operating the Air Injector Reactor (AIR) pump, thereby rendering that device inoperative; and (3) knowingly removed hoses actuating the transmission controlled spark system (TCS system), thereby rendering that device inoperative. The suit requested a $10,000 civil penalty to be imposed on each of the three separate violations and that Haney Chevrolet be enjoined from any further violations of the Clean Air Act.

This enforcement action stemmed from a complaint by a private citizen that air pollution control devices installed on his new 1972 Chevrolet Corvette, Model LT-1, had been tampered with and/or removed by the dealer from whom the car had been purchased. This complaint was investigated by representatives of EPA's Region IV Enforcement Division and a representative from the Mobile Source Enforcement Division on October 26, 1972. This investigation confirmed that certain emission control equipment had been removed from the vehicle. Representatives from Haney Chevrolet admitted having removed the equipment, but stated that in their opinion, this was necessary to correct a serious safety hazard stemming from backfiring and

explosions occurring in the exhaust system which surrounded the gas tank. In November, General Motors Corporate headquarters was queried about this incident and in December, replied that the replacement carburetor was the wrong model and would be expected to increase emissions and that in their opinion, the effect of the emission control devices on the exhaust system involved no unreasonable risk to safety.

This enforcement action is the first such action in the Nation involving a violation of motor vehicle emission control device tampering/ removal provisions of Title II of the Clean Air Act.

ATTACHMENT 12(a) - 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Civil Action No. 70-328-CA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLORIDA POWER AND LIGHT COMPANY,

Defendant.

FINAL JUDGMENT

WHEREAS the plaintiff, the United States of America, has filed a complaint and an amended complaint in the above-captioned matter, and the defendant, the Florida Power and Light Company, has appeared and denied the allegations of the complaint, and has filed affirmative defenses and a counterclaim and the plaintiff and the defendant, by their respective attorneys, have each consented to the making and entry of this Final Judgment without further pleading or trial or adjudication of or finding on any issues of fact or law raised by the complaint,

NOW, THEREFORE, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue in the pending action or in any other proceeding, and, upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties thereto.

II

For the purposes of this Final Judgment:

(a) "Florida Power and Light" shall mean the defendant Florida Power and Light Company, a Florida corporation.

(b) "Generating facilities" shall mean Florida Power and Light's fossil fueled electric generating units 1 and 2, and nuclear powered electric generating units 3 and 4, all of which are located (or are under construction) at Turkey Point near Homestead, Florida.

(c) "Intake structures" shall mean all natural or artificial channels, structures, or devices through which Florida Power and Light draws or is able to draw water from Biscayne Bay or Card Sound for use in cooling its generating facilities.

(d) "Cooling system" shall mean any and all waterways, lakes, ponds, canals, dikes, levees, dams, barriers, or other structures, devices, or appurtenant facilities which under the provisions of this Judgment shall be constructed and employed to reduce the temperature of water discharged from Florida Power and Light's generating facilities.

(e) "Discharge canals" shall mean all natural or artificial conduits through which water from Florida Power and Light's generating facilities is discharged to Biscayne Bay or Card Sound.

(f) "A regional emergency" shall mean one of the following occurrences within the State of Florida: (1) a catastrophic natural disaster including hurricanes, floods, and tidal waves; or (2) other emergencies declared by state, county, municipal, or federal authorities during which an uninterrupted supply of electric power is vital to public health and safety.

(g) "National power emergency" shall mean any event causing authorized federal officials to require or

request that Florida Power and Light supply electricity to points within or without the State of Florida.

(h) "Reactor emergency" shall mean an unanticipated equipment malfunction necessitating prompt remedial action to avoid endangering the public health or welfare.

(i) Abbreviations are as follows: (1) cfs = cubic feet per second; (2) °F = degrees farenheit; (3) fps = feet per second.

(j) Temperature, salinity, flow rate, and velocity measurements provided herein shall be instantaneous measurements and shall not be average figures.

(k) "Salinity" shall mean the total mass of dissolved solids in a one liter sample of water, referred to the temperature of the receiving water.

III

The provisions of this Final Judgment shall be binding upon Florida Power and Light, its directors, officers, agents, servants, employees, successors and assigns, and all persons, firms, and corporations acting under, through, or for it, and all persons, firms, and corporations in active concert or privity with it, providing they have actual notice of the Final Judgment by personal service or otherwise.

IV

Subject to the provisions of Paragraph VI, and commencing four years after the receipt by Florida Power and Light of all necessary construction permits, and upon receipt of the cooling system operating permits, but in no event later than five years from the date of the entry of this Final Judgment, Florida Power and Light shall not discharge into Biscayne Bay or Card Sound any water used for cooling its condensors at its generating facilities at Turkey Point,

except in accordance with the provisions of Paragraph V of this Final Judgment. With respect to those same generating facilities, immediately subsequent to the entry of this Final Judgment, Florida Power and Light:

1. Shall, upon securing the necessary State and Federal permits, complete the construction of the Card Sound Canal within four years;

2. Shall continue to prosecute its application to the Corps of Engineers for a dredging permit for the Card Sound Canal, and immediately upon entry of this Final Judgment, the Corps of Engineers will commence to process Florida Power and Light's application for a permit pursuant to the regulations of the Corps of Engineers;

3. Shall not, prior to the completion of the Card Sound Canal, discharge water into Biscayne Bay at a rate in excess of 3000 cfs;

4. After completion of the Card Sound Canal and until October 1, 1973, shall not discharge water at an average 24 hour rate in excess of 2750 cfs into Card Sound and 1500 cfs into Biscayne Bay; thereafter Florida Power and Light shall not discharge water at an average 24 hour rate in excess of 2150 cfs into Card Sound and 2100 cfs into Biscayne Bay;

5. Shall not at any time discharge water into Biscayne Bay or Card Sound at a temperature in excess of 95°F;

6. Shall construct and maintain the outlet into Card Sound so that:

A. No discharge will be allowed to flow over the shallow substrate which is exposed at low tide (retaining structures or berms extending to the 8 foot bathymetric contour of Card Sound may be necessary to accomplish this purpose and are acceptable);

B. The discharge will be directed upward so that a warm water plume will form on top of the water; and

C. The rate of discharge will be controlled so that water will not enter Card Sound at a velocity greater than 1.5 fps;

7. Shall construct no later than July 1, 1972, and thereafter maintain, a ground water monitoring system southward and eastward of the cooling system for the purpose of evaluating the effect of the seepage from the cooling system upon the underlying aquifer. The monitoring system shall consist of a series of observation wells, the number and location of which shall be mutually agreed upon between Florida Power and Light Company and the Environmental Protection Agency, but which will not exceed 23 wells drilled to a depth of not more than 70 feet. From July 1, 1972 to July 1, 1976, transmissivity will be evaluated in each well every three months, while temperature, concentration of biocides, and salinity will be measured in each well each month. Monitored data will be submitted to the Environmental Protection Agency within ten days following collection. Monitoring frequency requirements to be maintained after July 1, 1976, will be determined by the Environmental Protection Agency based on evaluation of the data in consultation with the United States Geological Survey. If in the judgment of the Environmental Protection Agency the monitored data reveals that substantial environmental harm is occurring, Florida Power and Light shall take such necessary remedial action as the Environmental Protection Agency may direct;

8. Shall install and maintain such protective devices at the intake structure and discharge canal as may be required by the Florida Department of Natural Resources in accordance with a reasonable construction schedule;

9. Shall not introduce biocides into the waters used to cool the condensors at its generating facility except in compliance with the specifications set out in Chapters 17-3 and 17-4 Florida Administrative Code and the applicable laws and regulations of the State of Florida;

10. Shall, consistent with good system maintenance and operating practices providing for necessary area protection, operating reserves, and over-all system reliability, provide power to the areas it serves in the State of Florida by drawing upon all sources of power available to it in such combinations as to minimize the discharges of heated water from the Turkey Point plant;

11. Shall immediately arrange with appropriate officials of the United States, the State of Florida, and other appropriate jurisdictions, to commence joint studies of: (a) the availability of groundwater from at least the depth of the Floridan aquifer (this joint study shall be completed within two years after the entry of this Final Judgment); (b) alternate sources of cooling water, particularly from nearby canals such as the Florida City Canal, the Mowry Canal, and the North Canal; (c) mechanical cooling devices such as powered spray modules and other reasonable concepts for reducing adverse environmental effects attributable to the cooling system specified in this Final Judgment; and (d) procedures for restoration of areas affected by discharges from the Turkey Point generating facilities. Florida Power and Light's financial contribution to these studies shall be limited to $500,000. The studies specified in (a), (b) and (c) above shall be directed toward the determination of the feasibility, practicability, and acceptability of utilization of such alternate sources of water as a substitute or supplement for withdrawals of make-up water from Card Sound for the cooling system described in Paragraph V below;

12. Shall utilize those waters which, as a result of the studies referred to in subparagraph 11 above, the Administrator of the Environmental Protection Agency may identify as being available to provide make-up water for Florida Power and Light's cooling system, to the extent that this can be done feasibly and practicably and at a cost which is not disproportionate to the degree of environmental protection to be achieved and to the extent that the same can be done without violating any lawful local, state, or federal rule, regulation, statute, ordinance, or order. The Administrator shall not identify groundwater as available for use without the written concurrence of the State of Florida or local agencies with jurisdiction recognized by federal or state law. Florida Power and Light shall alter its Card Sound discharge and withdrawal flow regimen based on the less saline water inputs, as directed by the Administrator, so as to achieve the least amount of environmental damage, but at no power production penalty;

13. Immediately proceed to acquire land for the construction, operation, and maintenance of a cooling system to reduce the temperature of the water discharged from the Turkey Point generating facilities consistent with the standards for operation required by this Final Judgment, and further shall commence to construct, immediately upon receipt of all necessary construction permits, the structures necessary to comply with Paragraph V of this Final Judgment, and shall submit quarterly progress reports concerning the construction of such cooling system in the four years following receipt of the necessary permits and, no later than April 1 of the fourth year after the date of the entry of this Final Judgment, a report specifying the results of trial operation and testing of the final cooling system; and

14. Shall install and operate monitoring devices at the outlet to Card Sound and at other locations, all of the foregoing to be specified by the Environmental Protection Agency, to measure temperature, salinity, flow rate, and velocity.

V

Except as otherwise provided by Paragraph IV of this Final Judgment, all water used by Florida Power and Light to cool its condensors at its generating facilities at Turkey Point shall be discharged into a cooling system, and no water shall be discharged from this cooling system into Biscayne Bay, or Card Sound, or any other navigable water of the United States or tributary thereof unless required to prevent the excessive concentration of salt in the waters of the cooling system, in which case discharges shall be made only into Card Sound and only under the following conditions:

1. Discharges to and withdrawals from Card Sound shall be made only through the Card Sound Canal;

2. The temperature of the water which is discharged as measured at the control structure (to be constructed at a point approximately one mile north of the outlet of Card Sound Canal) shall not exceed 90° F;

3. Subject to subparagraph 2 of Paragraph V, the temperature of the water which is discharged, as measured at the control structure, shall not be more than 4° F above the ambient temperature of the waters of Card Sound as measured at a station or stations to be designated by the Environmental Protection Agency;

4. Variations in the temperature of the water which is discharged shall not exceed 2° F per hour during times when the temperature is rising, or 1.0° F per hour during times when the temperature is falling;

5. The salinity of the water which is discharged, as measured at the outlet to Card Sound, may not be greater than 1.10 times the salinity of the water of Card Sound and may not exceed 44 parts per thousand;

6. The flow as measured at the control structure shall not exceed 1200 cfs;

7. Discharges and withdrawals shall be limited to a tidal regimen (which approximates a six hour period), except in the event that salinity in the cooling system approaches 1.10 times the salinity of the water of Card Sound, or 44 parts per thousand, whichever is more limiting and an additional time period for discharge is required to avoid exceeding those limits;

8. All man-made canals connecting the intake structures and the cooling system with Biscayne Bay shall be closed;

9. Final operating requirements shall include the interim operating requirements contained in subparagraphs 6, 7, 8, 9, 12 and 14, of Paragraph IV; and

10. Florida Power and Light shall develop and submit to the Environmental Protection Agency within two years from entry of this Final Judgment a contingency plan for rapid restoration of the cooling facilities in the event of system damage due to storms, hurricanes, and similar extraordinary acts of nature.

VI

During a national power emergency, regional emergency, reactor emergency, or at any time when the health, safety, or welfare of the public may be endangered by the inability of Florida Power and Light to supply electricity from any other sources available to it, the operating limits provided in this Final Judgment shall be inapplicable. However, during such emergencies, the defendant shall not exceed the operating limits except as is necessitated by the emergency. Provided Florida Power and Light shall have made timely and proper application for all necessary licenses, permits, consents, approvals, and certifications required by law for construction or operation of the cooling system and discharge canal required to meet the standards provided for herein and shall have duly prosecuted such applications, this Court may extend the time within which Florida Power and Light is required to do any act herein by the

length of any delay in completion of construction or operation of the cooling system which is shown to have been the exclusive result of physical impossibility, force majeure, or legal prohibition.

VII

In the event Florida Power and Light shall be in substantial violation of the express operating provisions of the cooling system herein, the United States shall give Florida Power and Light written notice describing said violations by certified mail to Florida Power and Light, 4200 West Flagler Street, Miami, Florida 33134, and if at the expiration of 3 days after the giving of said notice, said violation upon which said notice was based shall continue to exist, the United States may apply to this Court for an order requiring Florida Power and Light to perform such obligations and comply with such limitations as are expressly required herein and shall accompany such application with a showing of said violation notice, and noncompliance. The relief which may be granted upon a showing of noncompliance with the operating limitations contained herein shall include but not be limited to an order requiring Florida Power and Light to limit operation of its generating facilities to the extent necessary to achieve compliance with this Final Judgment.

VIII

This Final Judgment is not and shall not be interpreted to be a permit under 33 U.S.C. §§403, or 407 nor shall it in any way affect Florida Power and Light's obligation, if any, to secure a license or permit from the Corps of Engineers or the Atomic Energy Commission pursuant to 33 U.S.C. §§403,or 407, 33 U.S.C. §§1151 et seq., 42 U.S.C. §2134, and 42 U.S.C. §4321, nor shall it be interpreted to affect or waive any of the conditions or requirements which may be validly imposed by the Corps of Engineers or the Atomic Energy Commission as conditions for the issuance of such a permit. The Department

of the Interior and the Environmental Protection Agency have reviewed and participated in technical studies which have been used to establish the standards for operation of the generating facilities and the cooling system hereinabove set forth, and the Department of the Interior and the Environmental Protection Agency shall recommend to the Corps of Engineers and the Atomic Energy Commission that the necessary permits and/or licenses be issued for the construction and operation of generating facilities, a cooling system, discharge canals, and any structures or work in navigable waters of the United States or for discharges into such waters or tributaries thereof, consistent with the standards for operation set forth in this Final Judgment and with the standards of the Atomic Energy Commission. Also, this Final Judgment does not operate to excuse Florida Power and Light from compliance, as required by law, with any Federal or State water quality requirements now or hereafter applicable to it.

IX

For the purpose of insuring compliance with this Final Judgment, duly authorized representatives of the Department of Justice, the Environmental Protection Agency, the Department of the Interior, the Atomic Energy Commission, and the Corps of Engineers shall be permitted access, at reasonable times, to Florida Power and Light's facilities at Turkey Point for the purpose of: (1) inspecting the cooling facilities, intake structure, discharge canal(s), and monitoring devices; (2) collecting water samples therefrom; (3) conducting testing procedures which are not unduly disruptive of the operation of such facilities; (4) obtaining from Florida Power and Light records of operations and other corporate records, data pertaining to the construction, operation and maintenance of its cooling system, intake

facilities and discharge canals and information concerning the distribution of electric power within the State of Florida. Information concerning the impact of the cooling system on the environment may be freely disclosed. Other information obtained under the provisions of this Paragraph will be divulged by the representatives designated thereunder to any person other than a duly authorized representative of the Department of Justice, Environmental Protection Agency, Department of the Interior, Atomic Energy Commission, or Corps of Engineers only as is provided by federal law or in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment.

X

Florida Power and Light agrees that it will dismiss its counterclaim in this action against the plaintiff, United States of America.

XI

Jurisdiction is retained for the purpose of enabling either party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, or the modification or termination of any of the provisions thereof or for the enforcement or compliance therewith. In addition copies of all reports, plans and studies required to be prepared by the terms of this Final Judgment shall be promptly filed with this Court. If Florida Power and Light utilizes the provisions of the first sentence of Paragraph VI, then it shall immediately report to this Court and to the Administrator of the Environmental Protection Agency the fact of the emergency and the reasons for utilization of such provisions.

Dated: Miami, Florida
September 10th, 1971

Lyde Atkins
United States District Judge

Certified to be a true and correct copy of the original.
U. S. District Court
Joseph I. Bogart, Clerk
Southern District of Florida
By [illegible]
Deputy Clerk
Date 9/11/71

We hereby consent to the entry of the foregoing Final Judgment without further notice.

THE UNITED STATES OF AMERICA, Plaintiff

BY:

Shiro Kashiwa By JAG
SHIRO KASHIWA
Assistant Attorney General
Department of Justice

Walter Kiechel Jr. By JAG
WALTER KIECHEL, JR.
Deputy Assistant Attorney General
Department of Justice

Robert W. Rust
ROBERT W. RUST
United States Attorney
Miami, Florida 33132

Martin Green
MARTIN GREEN
Attorney
Department of Justice

James A. Glasgow
JAMES A. GLASGOW
Attorney
Department of Justice
Washington, D. C. 20530

FLORIDA POWER AND LIGHT COMPANY, Defendant

BY:

ROBERT J. GARDNER
Vice President

MCCARTHY STEEL HECTOR & DA
Attorneys for Defendant

BY:
WILLIAM C. STEEL
Attorney
Miami, Florida 33131

ATTACHMENT 12(b) - 4

STATUS REPORT ON IMPLEMENTATION OF THE FINAL JUDGMENT
FLORIDA POWER AND LIGHT CO.
May 1973

Construction of the Florida Power and Light Company's Turkey Point Plant cooling canal system has been ahead of schedule since November 1972 and as of May 22, 1973, was 70 percent complete. This represents about 2,800 acres of cooling surface now available out of a projected total of about 3,860 acres. The scheduled completion date is April, 1974. The present target date for completion, based on recent progress and reports from the Company, is mid-to-late September, 1973, which will be approximately six months ahead of schedule.

Beginning February 18, 1973, the then-completed portion of the cooling canal system was closed off from Biscayne Bay and Card Sound for a series of hydraulic and thermal performance tests. Between the 6th and 23rd of April, the Card Sound Canal Control Structure was opened leaving the canal connecting the cooling system to Biscayne Bay closed for the tidal flushing portion of the testing program.

Determinations of clarity and water quality in the canal system were made prior to this portion of the testing program.

Biological sampling, for algal productivity, species identification and other parameters were required of the utility prior to the hydraulic and thermal test program. These studies were performed independently (by EPA and DOI) and by FP&L consultants. The results of the testing did not indicate dominance of nuisance algae in canal water masses. Although not directly connected with the terms of the Final Judgment, the potential for blue-green algal dominance of the canal system was brought to the attention of FP&L and its consultants. A continuing survey program was therefore recommended. Data obtained in this survey will be evaluated prior to the future release of canal waters into Card Sound or Biscayne Bay should this be proposed by the utility.

Since April 23 the cooling canal system has remained in a closed, recirculating mode. Data derived from the cooling canal testing program are presently being evaluated with a view to determining whether the system will have sufficient cooling capacity during this summer to permit continued closed-cycle operation.

A water quality and velocity monitoring system has been designed, approved, and installed to provide assurance that the Company is in compliance with the Final Judgment with respect to any discharges to Biscayne Bay and Card Sound from the Turkey Point facility. The Company has submitted periodic monitoring data reports to EPA as specified in the Final Judgment and these data are reviewed and evaluated on a routine basis. To date there is no evidence of additional significant ecological damage since the emergency provisions were invoked in July 1972.

The Company responded promptly and effectively to the Agency's request that they control the discharge of fine suspended sediment associated with the continuing construction of cooling canals and has taken adequate precautions to assure that floating mangrove roots and branches were removed from the canals before they might have floated into the adjacent estuarine environments.

Working Group Status:

Four areas of study were specified in the Final Judgment as follows:

I. Ground Water

II. Mechanical Cooling Devices

III. Ecological Impact and Recovery and Dredging

IV. Use of Surface Water and Treated Effluent

I. Working Group I outlined a ground-water monitoring network of 23 wells which were installed by the Company and the required data have been collected monthly since July 1972. These data are being evaluated to determine the extent of influence of the cooling canal system on the shallow adjacent ground water. Because of changes in the circulation patterns caused by seasonal influences and the construction progress and testing programs, the influence of the canal system on the shallow ground water is not yet evident.

A 2,000 ft. deep research well was drilled and tested to evaluate the availability of ground water for use as cooling system makeup or to dilute saline discharges from the cooling system into Card Sound. Salinity ranged from about 3,000 to 12,000 parts per million and the productivity of the zone tested, between 1,000 and 2,000 feet, appears to be sufficiently high that dilution water could be obtained to provide significant dilution if required. Additional drilling and testing would be needed, however, to quantify the indications available from the single test well results.

II. Working Group II was formulated to investigate mechanical cooling devices. The Environmental Protection Agency and the Florida Power and Light Company are participating in a research program that is designed to determine: (1) the quantity of drift emitted from saltwater cooling devices; and (2) the increase in ambient salt concentration resulting from the operation of the devices. The research program includes the following:

a) The installation of a mechanical draft cooling tower and a set of spray modules;

b) the measurement of drift emitted from the cooling devices; and,

c) the measurement of additional salt deposition in the surrounding area that can be attributed to the cooling devices.

Florida Power and Light signed a contract with the Marley Corporation in October 1972 for the fabrication and installation of the mechanical draft cooling tower. The scheduled start-up date for the tower is October 1, 1973. The site for the tower has been cleared at Turkey Point. The designs for the concrete foundation and other related engineering efforts are now being completed.

The Environmental Protection Agency is working toward an agreement with the Environmental Systems Corporation for the following:

a) the installation of spray modules;

b) the testing of background salt deposition (i.e., without the operation of the cooling devices);

c) the measurement of drift emitted from the cooling device; and

d) ambient measurements of salt deposition while the devices are in operation.

Two complete testing periods are planned in which ambient salt measurements will be conducted. Summer and winter conditions will be evaluated. Field work is scheduled to begin during mid-August 1973. A final report on this research is now planned for January, 1974.

III. Working Group III was formed to assess what biological observations were needed to evaluate ecological impact and recovery and dredging. The Group, chaired by a representative of the State of Florida designated by the U. S. Department of Interior, has met to discuss establishing a recovery program for the Turkey Point area once the baseline of new ecological habitat is clearly established in the now-modified terrain. Periodic observations have been made to evaluate impact of the Turkey Point discharges on Biscayne Bay and Card Sound. Specific programs will be proposed when the cooling system is complete and the new ecosystem has been recognized and delineated.

IV. Working Group IV conducted a study of the potential availability of makeup water for the Turkey Point cooling system from surface drainage canals of the Central and Southern Florida Flood Control District. Their report indicates that the seasonal variability of this source restricts its availability to periods of high rainfall and, therefore, recommends that additional more-dependable sources be sought. Questions concerning the possible availability and costs of treated effluent are yet to be resolved.

ATTACHMENT 15(b) - 1

ENVIRONMENTAL PROTECTION AGENCY

REGION IV

1421 Peachtree St., N.E., Atlanta, Georgia 30309

Woodside--404/526-3004

For Immediate Release

ATLANTA, Ga.--Except when authorized by permit, the dumping of any material into the ocean is prohibited after April 23rd by the "Marine Protection, Research, and Sanctuaries Act of 1972."

Ocean dumping permits for dredged spoil will be issued by the Corps of Engineers and all other ocean dumping permits will be issued by the U.S. Environmental Protection Agency (EPA).

The regulations to implement this law are now being developed and will be published in the Federal Register when completed.

People or organizations in the southeastern states of Alabama, Florida, Georgia, Mississippi, South Carolina, North Carolina, Kentucky and Tennessee who want to file for an application for an ocean dumping permit should write the U.S. Environmental Protection Agency, 1421 Peachtree St., N.E., Atlanta, Ga. 30309.

The letter should contain the name and address of the applicant; name and address of person or firm; the name and usual location of the conveyance to be used in the transportation and dumping of the material involved; a physical description of material to be dumped including chemical description where appropriate, and the quantity to be dumped and the proposed dumping site.

Everyone who writes EPA will be sent information about a final application for a permit as soon as possible. This final application is

-more-

expected to include questions about the description of the process or activity giving rise to the production of the dumping material; information on past activities of applicant or others with respect to the disposal of the type of material involved, and a description about available alternative means of disposal of the material with explanations about why an alternative is thought by the applicant to be inappropriate.

###

Ref: 4AEP:JWE

APR 27 1973

Colonel Emmett C. Lee, Jr.
District Engineer
U.S. Army Engineer District, Jacksonville
P.O. Box 4970
Jacksonville, Florida 32201

Dear Colonel Lee:

Under provision of the recently enacted Public Law 92-532, this agency is taking the final steps to establish an Ocean Disposal Permit Program. This law becomes effective April 23, 1973, at which time it will be illegal to dump any industrial waste or sewage sludge in the ocean without an EPA permit.

Several months ago, in anticipation of the passage of the ocean dumping law, we conducted an inventory to ascertain the number of ocean dumping operations and the nature of the waste being dumped. In an effort to update this information, we would appreciate your providing us with any information you may have concerning ocean dumping activity which is currently taking place in your District.

Your assistance in providing us with this information is greatly appreciated. In the event you do not have any knowledge of ocean dumping in your area, a negative response to this request would be helpful.

Sincerely yours,

Original signed by:

Paul J. Traina
Director, Enforcement Division

ADDRESSEES:

U.S. Army Engineer District, Charleston

U.S. Army Engineer District, Mobile

US Army Engineer District, Savannah

US Army Engineer District, Wilmington

Fifth U.S. Coast Guard District

Seventh U.S. Coast Guard District

Eighth U.S. Coast Guard District

Alabama Water Improvement Commission

Alabama Department of Conservation & Natural Resources
Director, Division of Marine Resources

Florida Department of Pollution Control

Florida Department of Natural Resources
Director, Division of Marine Resources

Georgia Department of Natural Resources
Environmental Protection Division

Georgia Game & Fish Division
Chief of Marine Fisheries

Mississippi Air & Water Pollution Control Commission

Gulf Coast Research Laboratory
Ocean Springs, Mississippi

N.C. Office of Water & Air Resources

N.C. Department of Commercial & Sports Fisheries

S.C. Water Pollution Control Authority

S.C. Marine Resources Division

ATTACHMENT 15(b) - 3

Department of Natural Resources
ENVIRONMENTAL PROTECTION DIVISION
47 TRINITY AVENUE, S.W.
ATLANTA, GEORGIA 30334

JOE D. TANNER
Commissioner

R. S. HOWARD, JR.
Division Director

March 28, 1973

Mr. Paul J. Traina, Director
Enforcement Division
Environmental Protection Agency
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Mr. Traina:

Reference your March 27, 1973 letter relative to ocean disposal of industrial waste or sewage sludge.

Other than American Cyanamid Company at Savannah, Georgia, we have no knowledge of any ocean dumping operations in this State. Cyanamid does discharge about 27 mgd of toxic and acidic wastes into the Savannah River Estuary. These wastes contaminate Georgia's and South Carolina's valuable coastal waters and ocean beaches. This is less direct than the conventional dumping at sea but it is ocean disposal and more damaging.

There is probably a significant volume of sewage, bilge water, etc. discharged beyond the mouth of the Savannah River from foreign and domestic shipping.

Sincerely,

R. S. Howard, Jr., Director

RSH:aj

STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

P. O. Box 188 - Dauphin Island, Alabama 36528

GEORGE C. WALLACE
GOVERNOR
CLAUDE D. KELLEY
COMMISSIONER
SIDNEY B. BLEDSOE
SSISTANT COMMISSIONER

DIVISION OF MARINE RESOU
WILLIAM F. ANDERSON, DIREC

March 29, 1973

Mr. Paul J. Traina, Director
Enforcement Division
Environmental Protection Agency
Region IV
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Mr. Traina,

We are aware of no ocean dumping off Alabama's coast, with the exception of dredge spoil from maintenance dredging of the outter bar of the Mobile Ship Channel. We feel that this spoil could serve a very useful purpose for beach nourishment on Dauphin Island if it was deposited closer to the shore at the eastern end.

Sincerely yours,

W. F. Anderson, Director
Marine Resources Division

WES:jb

20-733 O - 73 - pt. 1A - 73

South Carolina
WILDLIFE and MARINE RESOURCES DEPARTMENT
JAMES W. WEBB, Executive Director

DR. JAMES A. TIMMERMAN, JR.
DIRECTOR, MARINE
RESOURCES DIVISION

CHARLES M. BEARDEN
CHIEF OF MARINE CONSERVATIO
MANAGEMENT AND SERVICES

March 29, 1973

Mr. Paul J. Traina
Director, Enforcement Division
Environmental Protection Agency
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Mr. Traina:

Dr . Timmerman has forwarded your letter of March 27 to me for reply.

At this time, the only ocean dumping activities along the South Carolina coast that I am aware of are the hopper dredge disposal program of the U. S. Army Corps of Engineers off Charleston Harbor and Winyah Bay and possibly some disposal activities by the U. S. Navy off Charleston in their dumping areas delineated on NOS charts.

This does not include present discharge activities in estuarine harbors and rivers, or planned and existing ocean sewage outfalls along the S. C. coast. Information on these can be obtained from Dr. Hubert Webb's office, S. C. Pollution Control Authority in Columbia.

Thank you for the opportunity to comment on this matter.

Sincerely,

Charles M. Bearden
Chief, CMCMS

CMB/pgr

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1890
WILMINGTON, NORTH CAROLINA 28401

SAWKS

30 March 1973

Mr. Paul J. Traina
Director, Enforcement Division
Environmental Protection Agency
1421 Peachtree Street, NE
Atlanta, Georgia 30309

Dear ~~Mr. Traina~~ Paul:

Reference is made to your letter of 27 March 1973 regarding ocean dumping activity within the Wilmington District of the Corps of Engineers.

At the present time, the only ocean dumping of industrial waste or sewage sludge occurring in the Wilmington District will be the contemplated cooling water discharge from the Brunswick Nuclear Power Plant being constructed by Carolina Power and Light Company near Southport, N. C. This discharge was the subject of a Refuse Act permit application number 074 OYP 2 000117. The file was transferred to your office in October 1972 after the passage of the Water Pollution Control Act amendments. To the best of our knowledge, there are no other instances of ocean dumping of industrial waste or sewage sludge occurring or projected for the near future. If we become aware of any other instances of this activity, we will notify your office accordingly.

If we can be of further assistance in this matter, do not hesitate to contact this office.

Sincerely yours,

Albert C. Costanzo

ALBERT C. COSTANZO
Colonel, Corps of Engineers
District Engineer

State of Florida

DEPARTMENT OF NATURAL RESOURCES

RANDOLPH HODGES
Executive Director

LARSON BUILDING / TALLAHASSEE 32304 / TELEPHONE 224-7141

PLEASE ADDRESS REPLY TO: 527 Larson Building

REUBIN O'D. ASKEW
Governor
RICHARD (DICK) STONE
Secretary of State
ROBERT L. SHEVIN
Attorney General
FRED O. DICKINSON, JR.
Comptroller
THOMAS D. O'MALLEY
Treasurer
DOYLE CONNER
Commissioner of Agricult
FLOYD T. CHRISTIAN
Commissioner of Educatic

March 30, 1973

Mr. Paul Traina
Director, Enforcement Division
Environmental Protection Agency
Region IV
1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

Dear Mr. Traina:

Reference is made of your request of March 27, 1973, for information concerning ocean outfalls or the dumping of industrial waste in Florida waters.

We have alerted all our coastal units to send this data to us as soon as possible for condensing. We will be in touch with you shortly with the results.

Sincerely,

Harmon W. Shields, Director
Division of Marine Resources

HWS/cwd

STATE OF ALABAMA

WATER IMPROVEMENT COMMISSION

IRA L. MYERS, M. D.
CHAIRMAN
STATE HEALTH OFFICER

CLAUDE D. KELLEY
VICE CHAIRMAN
COMMISSIONER, DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES

JAMES W. WARR
ACTING CHIEF ADMINISTRATIVE OFFICER

749 STATE OFFICE BUILDING
MONTGOMERY, ALABAMA 36104
TELEPHONE 269-7971

April 5, 1973

Mr. Paul J. Triana
Director, Enforcement Division
Environmental Protection Agency
Region IV
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Mr. Traina:

This letter is in response to your letter of March 27, 1973, concerning the Ocean Disposal Permit System. As you know, Alabama has a very small coast line and a good portion of this is Mobile Bay. We would like to know if this program is to include the Bay; and if not, up to what point in the mouth of Mobile Bay is considered ocean.

There are several seafood processors that discharge into Bayou La Batre, but not directly into the Gulf. If these areas are not considered ocean, then the only ocean disposal would be shrimp trawlers disposing of shrimp heads and trash fish in the Gulf.

Yours very truly,

Timothy G. McCartha
Water Pollution Control Biologist
Water Improvement Commission

TGM/js

South Carolina
Pollution Control Authority

AUTHORITY MEMBERS
ROBERT W. TURNER . . . . CHARLESTON
CHAIRMAN
BEN N. MILLER, M.D. . . . . COLUMBIA
JOHN McCRADY, JR. . . . . CHARLESTON
JACK E. POWERS . . . . . SIMPSONVILLE
WILLIAM M. BRICE, JR. . . . . YORK
JOHN F. ANDREWS, PH.D. . . . CLEMSON
C. MARION SHIVER, JR. . . . CAMDEN

HUBERT J. WEBB, PH.D.
EXECUTIVE DIRECTOR

OWEN BUILDING
1321 LADY STREET P. O. BOX 11628
Columbia, South Carolina 29211

AUTHORITY MEMBERS
EX-OFFICIO
E. KENNETH AYCOCK, M.D. . . COLU
JAMES W. WEBB . . . . . COLU
CLAIR P. GUESS, JR. . . . . COLU
BOB HICKMAN . . . . . COLU
JOHN W. PARRIS . . . . . COLU
J. BONNER MANLY . . . . . COLU

AREA CODE 803
TELEPHONE: 758-2915

April 5, 1973

Mr. Paul J. Traina, Director
Envorcement Division
Environmental Protection Agency
Region IV
1421 Peachtree St., N.E.
Atlanta, Georgia 30309

Re: Ocean dumping of industrial waste
or sewage sludge.

Dear Mr. Traina:

Dr. Webb has asked me to reply to your letter of March 27, 1973, concerning the above referenced subject.

We have contacted our field personnel in the Charleston District who contacted the Corps of Engineers, the U. S. Coast Guard, and the South Carolina Shellfish Patrol. We do not have any knowledge of ocean dumping off the coast of South Carolina. If we do learn of any dumping of industrial waste or sewage sludge we will inform you.

Yours truly,

R. Kenneth Tinsley, Chief
Water Pollution Control Division

RKT:NMH/lc

STATE OF FLORIDA
DEPARTMENT OF POLLUTION CONTROL
2562 EXECUTIVE CENTER CIRCLE, EAST
MONTGOMERY BUILDING, TALLAHASSEE, FLORIDA 32301

PETER P. BALJET
EXECUTIVE DIRECTOR

DAVID H. LEV
CHAIRMAN

April 6, 1973

Mr. Paul J. Traina
Enforcement Division
Environmental Protection Agency
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Water Pollution-Federal Agenc

EPA - Ocean Dumping

Dear Mr. Traina:

Reference to your communication March 27, 1973, pertaining to Public Law 92-532, which will become effective April 23, 1973, making it illegal to dump any industrial wastes or sewage sludge in the ocean without an EPA permit. Please be advised that we have had our Division of Operations contact local programs, marine patrol, Department of Natural Resources, Sheriffs departments, city halls, and others. They report as far as anyone knows, there is no significant ocean dumping taking place in Florida.

One Sheriffs department did report that infrequently they dumped confiscated weapons, slot machines, etc., in the ocean. We further suspect that the U.S. Navy is dumping, however, we would assume that EPA would obtain this information through channels and determine the frequency and amount being dumped by federal agencies.

Please consider this a negative report as requested in the last paragraph of your letter.

Sincerely,

Peter P. Baljet

PPB:bjv

cc: Mr. David H. Scott
Mr. Hamilton Oven
Mr. R. Charles Dickson
Mr. Alex Senkevich

STATE OF NORTH CAROLINA
DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES
Box 27687 Raleigh 27611
JAMES E. HARRINGTON
SECRETARY
TELEPHONE
AREA CODE 919 829-4984
JAMES E. HOLSHOUSER
GOVERNOR

April 9, 1973

Mr. Paul J. Traina
Director, Enforcement Division
Environmental Protection Agency
Region IV
1421 Peachtree St., N.E.
Atlanta, Georgia 30309

Subject: Ocean Outfalls in North Carolina

Dear Mr. Traina:

This is in reply to your letter of March 27, 1973 requesting information concerning ocean outfall and ocean dumping activities currently taking place in our state. At present, only one ocean outfall has been approved in the state of North Carolina. This outfall is the proposed cooling water discharge at the Brunswick Nuclear Station of Carolina Power and Light Company, Brunswick County, North Carolina. To my knowledge, there are no other ocean outfalls in the state and, at the present time, no ocean dumping leaving the state's waters.

The above does not, of course, include the placement of materials for the formation of fishing reefs off the coast of North Carolina. Several proposed and intermittent situations have developed for the creation of these artificial reefs.

If I can be of further assistance to you, do not hesitate to contact me.

Sincerely yours,

E. C. Hubbard
Assistant Director

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

Address reply to:
COMMANDER (mep)
Fifth Coast Guard District
Federal Bldg.
431 Crawford St.
Portsmouth, Va. 23705

5922

10 April 1973

Environmental Protection Agency
Region IV
1421 Peachtree St., N. E.
Atlanta, Georgia 30309

Attention Mr. Paul J. Traina
Director, Enforcement Division

Dear Mr. Traina:

In response to your letter of 27 March 1973 seeking information concerning Ocean dumping within the waters of the Fifth Coast Guard District, the U. S. Army Corps of Engineers has over the years been the agency issuing dumping permits; therefore, we do not have records of the permits that have been issued.

For the desired information I suggest that you contact the following Corps of Engineers District Offices:

Norfolk District
Fort Norfolk
803 Front Street
Norfolk, Va. 23501

Baltimore District
P. O. Box 1715
Baltimore, Md. 21303

Wilmington District
P. O. Box 1890
Wilmington, N. C. 28402

If I can be of any further assistance, please feel free to write.

Sincerely,

E. HAYES, Jr.
Captain, U. S. Coast Guard
Chief, Marine Safety Division
By direction of the Commander
Fifth Coast Guard District

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32201

SAJSD Permits

10 April 1973

Mr. Paul J. Traina
Director, Enforcement Division
Environmental Protection Agency
Region IV
1421 Peachtree St., N. E.
Atlanta, Georgia 30309

Dear Mr. Traina:

Reference is made to your letter dated 27 March 1973 inquiring into the number of ocean dumping operations within the Jacksonville District which would require an EPA permit in accordance with P. L. 92-532.

The only ocean dumping of industrial waste we know of is that conducted by Westgate Caribe Company in Puerto Rico. A Department of the Army permit was issued to them but the file has been transferred to Region II of EPA in New York. We know of no ocean dumping of sewage sludge; however, you should contact the Department of Pollution Control for that information.

Sincerely yours,

GAIL G. GREN
Chief, Operations Division

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 919
CHARLESTON, S.C. 29402

SANKP

10 April 1973

Mr. Paul J. Traina
Environmental Protection Agency
1421 Peachtree Street, N. E.
Atlanta, Georgia 30309

Dear Mr. Traina:

Reference is made to your letter dated 27 March 1973 concerning the Ocean Disposal Permit Program.

The Charleston District does not have any knowledge of dumping of industrial waste or sewage sludge in ocean areas adjoining the district. In maintaining the entrance channels at Charleston, Georgetown and Port Royal harbors, Corps of Engineers hopper dredges dispose of dredged material at the following locations:

	Location		Average Annual Volume
Charleston	Lat. 32°40'	Long. 79°48'	493,000 C.Y.
Georgetown	33°11'	79°08'	100,000 C.Y.
Port Royal	32°09'	80°36'	200,000 C.Y.
	32°05'	80°36'	

Sincerely,

ROBERT C. NELSON
Colonel, Corps of Engineers
District Engineer

DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 889
SAVANNAH, GEORGIA 31402

SASKS

20 April 1973

Mr. Paul J. Traina, Director
Enforcement Division
Environmental Protection Agency, Reg. IV
1421 Peachtree St., N.E.
Atlanta, GA 30309

Dear Mr. Traina:

This is in response to your letter dated 27 March 1973 regarding Public Law 92-532 concerning industrial waste or sewage sludge being dumped into the ocean.

We have no knowledge of any of the above material being dumped within the Savannah District area of jurisdiction.

Sincerely yours,

Steven Osvald

STEVEN OSVALD
Chief, Permits & Statistics Branch

Joe D. Tanner
COMMISSIONER

Jack Crockford
DIVISION DIRECTOR

Department of Natural Resources

GAME AND FISH DIVISION
Coastal Fisheries Office
P. O. Box 1097
Brunswick, Georgia 31520

April 20, 1973

Mr. Paul J. Traina, Director
Enforcement Division
Environmental Protection Agency
1421 Peachtree Street, N.E.
Atlanta, Georgia 30309

Dear Mr. Traina:

This is in reply to your inquiry concerning ocean dumping activity which was addressed to Mr. William Anderson of this office.

It is assumed that your reference to ocean dumping refers to activities conducted on a regular basis as a means of disposing of various waste materials. We have no knowledge of any such ocean dumping operations in the waters off Georgia's coast at the present time.

Sincerely,

David H.G. Gould
Supervisor of Coastal Fisheries

DHGG/sjm

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

ADDRESS REPLY TO
COMMANDER (mep)
EIGHTH COAST GUARD DISTRI
CUSTOMHOUSE
NEW ORLEANS, LA 70130

5922
23 April 1973

Director Enforcement Division
Environmental Protection Agency Region IV
1421 Peachtree St., N. E.
Atlanta, Georgia 30309

Dear Mr. Traina:

A survey was conducted recently by the Coast Guard to ascertain the numbers and nature of Ocean Dumping operations taking place in the Gulf Coast area. Our findings are presented as enclosure (1). If you have any further questions please contact me.

Sincerely yours,

R. E. FORD
LTJG, U. S. Coast Guard
Chief, Maritime Environmental Prote
Branch
By direction of the Commander
Eighth Coast Guard District

Encl: (1) Gulf Waste dumping operations

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR AND WATER PROGRAMS DIVISION
REGION IV
1421 PEACHTREE ST., N. E.
ATLANTA, GEORGIA 30309

June 13, 1973

Honorable Henry S. Reuss
Chairman, Subcommittee on Conservation
and Natural Resources
Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-349-C
Washington, D.C. 20515

Dear Mr. Chairman:

Your committee requested copies of all Environmental Protection Agency draft or final guidelines relating to the reliability involved in wastewater treatment facility design and operation. The attached manual is hereby provided as you requested.

The manual provided is the Draft Revision #3 of the proposed guidelines on Design Criteria for Mechanical, Electric and Fluid System and Component Reliability. The Division of Municipal Wastewater Systems in our EPA Headquarters office has advised that final guidelines are expected about August 1, 1973. At this point all that is required for approval on these guidelines is the Administrator's review and approval. The Division of Municipal Wastewater Systems has indicated that they will provide you with a copy of the final document after publication.

If I can be of further assistance, please advise.

Sincerely yours,

for John C. White

Jack E. Ravan
Regional Administrator

Attachment

Draft - Rev. 3
January 29, 1973

NOTICE

This document is a preliminary draft. It has not been formally released by EPA and should not at this stage be construed to represent Agency policy. It is being circulated for comment on its technical accuracy and policy implications.

Technical Bulletin No. ____

DESIGN CRITERIA FOR MECHANICAL, ELECTRIC, AND FLUID SYSTEM AND COMPONENT RELIABILITY

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF WATER PROGRAM OPERATIONS

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DESIGN CRITERIA FOR MECHANICAL, ELECTRIC, AND FLUID SYSTEM AND COMPONENT RELIABILITY

Purpose

The purpose of this Technical Bulletin is to amplify and supplement the Federal Guidelines for Design, Operation, and Maintenance of Wastewater Treatment Facilities with regard to establishing minimum standards of reliability for mechanical, electric, and fluid systems and components. This Technical Bulletin provides reliability design criteria for wastewater treatment works projects seeking Federal financial assistance under PL 84-660, as amended. Further, this Technical Bulletin identifies the information which shall be submitted in the Design Report with regard to reliability.

Definitions

The following definitions apply to the terms used in this Technical Bulletin:

Component - A single piece of equipment which performs a specific function in the wastewater treatment works. In this context a component may be an entire piece of process equipment (e.g., sedimentation basin or vacuum filter) or may be a single piece of equipment (e.g., a valve or a pump).

Controlled Diversion - Diversion in a controlled manner of inadequately treated wastewater around the treatment works to navigable waters.

Design Flow - That flow specified in the Design Report used as the basis of design of a component and/or system.

Design Period - The period of time from first operation to the year at which the treatment works is expected to reach the design flow.

Design Report - A report submitted by the Grant Applicant identifying and documenting the basis for a wastewater treatment works design.

Effluent Limitation - Any restriction established by a State or the EPA Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

Hydraulic Capacity - The maximum flow capacity of a component which does not result in flooding or overflowing.

Peak Wastewater Flow - The maximum wastewater flow expected during the design period of the treatment works.

Reliability - A measurement of the ability of a component or system to perform its designated function without failure. In this Technical Bulletin, reliability pertains to mechanical, electric and fluid systems and components only and includes the maintainability of those systems and components. **Reliability of biological processes, operator training, process design, or structural design is not within the scope of this Technical Bulletin.**

Vital Component - A component whose operation or function is required to prevent a controlled diversion, is required to meet effluent limitations, or is required to protect other vital components from damage.

Wastewater Treatment Works - The works that treats the wastewater, including the associated wastewater pumping or lift stations, whether or not the stations are physically a part of the works. Holding ponds or basins are considered included, whether or not the ponds or basins are physically a part of the works.

Terms Used in Specifying Criteria

The following are clarifications of terms used in specifying criteria in this Technical Bulletin:

- Shall - Used to specify criteria which are mandatory. Departure from these criteria requires a Departure Request to be submitted by the Grant Applicant and approval of the request by the Regional Administrator.
- Permissible - Used to clarify the intent of mandatory criteria by giving examples of designs which are in conformance with the criteria.
- Consideration and Where Practicable - Used to specify criteria which shall be considered by the Grant Applicant, but which are not mandatory.

Classification

This Technical Bulletin establishes minimum standards of reliability for three classes of wastewater treatment works. Unless identified as applying to a particular class, all criteria contained in this document apply equally to all three classes. The reliability classification shall be selected and justified by the Grant Applicant, subject to the approval of the Regional Administrator, and shall be based on the consequences of degradation of the effluent quality on the receiving navigable waters. This document does not specify requirements for classifying works; however, suggested guidelines are:

Class I — Works which discharge into navigable waters that could be permanently or unacceptably damaged by effluent which was degraded in quality for only a few hours. Examples of Class I works might be those discharging near drinking water reservoirs, into shellfish waters, or in close proximity to areas used for water contact sports.

Class II — Works which discharge into navigable waters that would not be permanently or unacceptably damaged by short-term effluent quality degradations, but could be damaged by continued (on the order of several days) effluent quality degradation. An example of a Class II works might be one which discharges into recreational waters.

Class III — Works not otherwise classified as Class I or Class II.

Note: Pumping stations associated with, but physically removed from, the actual treatment works could have a different classification from the works itself.

Applicability of Technical Bulletin

New treatment works and additions or expansions to existing treatment works shall comply with this Technical Bulletin. Portions of existing works, for which the addition or expansion is dependent for reliable operation, shall comply with this Technical Bulletin to the degree practicable. There may be some treatment works for which fulfillment of some of the design criteria may not be necessary or appropriate. There will be other cases in which these criteria are insufficient, and additional criteria will be identified by the Regional Administrator. It is expected that additional criteria may be needed for unusual environmental conditions and for new processes. Within this context, the design criteria should be used as a reference, allowing additions or deletions as an individual case may warrant.

A basic requirement specified in these criteria is component backup. However, system reliability can also be attained through flexibility in the design and operation of systems and components. This document does not attempt to define requirements for system flexibility.

100. WORKS DESIGN CRITERIA

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100. WORKS DESIGN CRITERIA

110. WORKS LOCATION

The potential for damage or interruption of operation due to flooding shall be considered when siting the treatment works. The treatment works' structures and electrical and mechanical equipment shall be protected from physical damage by the maximum expected one hundred (100) year flood. The treatment works shall remain fully operational during the twenty-five (25) year flood, if practicable; lesser flood levels may be permitted dependent on local situations, but in no case shall less than a ten (10) year flood be used. Works located in coastal areas subject to flooding by wave action shall be similarly protected from the maximum expected twenty-five (25) and one hundred (100) year wave actions.

Existing facilities being expanded, modified, upgraded, or rehabilitated shall comply with these criteria to the degree practicable.

The flood and wave action elevations used to implement these criteria shall be determined and justified by the Grant Applicant, using available data sources where appropriate. Elevations for a specific location may be available from local or state studies as well as studies by the following Federal organizations: U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Soil Conservation Service, National Oceanic and Atmospheric Administration, and Tennessee Valley Authority.

The works shall be accessible in all seasons.

120. PROVISIONS FOR WORKS EXPANSION AND/OR UPGRADING

All new works and expansions to existing works shall be designed for further expansion except where circumstances preclude the probability of expansion. During a works upgrading or expansion there shall be no interruption of normal operation.

130. PIPING REQUIREMENTS

131. Pipes Subject to Clogging

131.1 Provisions for Flushing of Pipes

The works shall have provisions for flushing with water and/or air all scum lines, sludge lines, lime feed and sludge lines, and any other lines which are subject to clogging. The design shall be such that flushing can be accomplished without causing violation of effluent limitations.

131.2 Provisions for Mechanical Cleaning of Pipes

All piping subject to accumulation of solids over a long period of time shall have sufficient connections and shall be arranged in a manner to facilitate mechanical cleaning. This may include the main wastewater treatment process piping, service water system piping, and sludge process piping. Special attention shall be paid to piping containing material which has a tendency to plug, such as scum lines, drain lines, and lime sludge lines. System design shall be such that the mechanical cleaning can be accomplished without violation of effluent limitations.

132. Provisions for Draining Pipes

Where practicable, all piping shall be sloped and/or have drains (drain plug or valve) at the low points to permit complete draining. Piping shall be installed without isolated pockets which cannot be drained.

133. Maintenance and Repair of Feed Lines

Lines feeding chemicals or air to basins, wetwells, and tanks shall be designed to enable repair or replacement without drainage of the basins, wetwell or tank.

140. COMPONENT MAINTENANCE AND REPAIR REQUIREMENTS

141. Component Repair

Every vital mechanical component (e.g., pumps, bar screens, instrumentation and valves, but not including piping, tanks, basins, channels, or wells) in the works shall be designed to enable repair or replacement without violating the effluent limitations or causing a controlled diversion. To comply with this requirement, it is permissible to use the collection system storage capacity or holding basins and to perform maintenance during the low influent flow periods. This requirement applies to shutoff and isolation valves. Provisions shall be made in the initial works design to permit repair and replacement of these types of valves.

Example: This criterion applies to the isolation valves of main wastewater pumps. The following are examples of ways these valves could be maintained. Pump inlet isolation valves can be maintained if the works has a two compartment main pump wetwell and if the works can continue operation (during the diurnal low flow period, for example) with one part of the wetwell isolated.

Pump outlet isolation valves connected to a pressurized outlet header can be maintained if the collection system storage capacity is sufficiently large to permit all main wastewater pumps to be stopped (collection system storage capacity is used) while the valve in question is removed and blind flanges installed.

142. Component Access Space

Adequate access and removal space shall be provided around all components to permit easy removal and replacement without interfering with the operation of other equipment. Components located inside buildings or other structures shall be removable without making a structural change to any part of the building or structure. Normal disassembly of the component is permissible for removal and replacement.

Note: This criterion requires that consideration be given to the sizing of doors, stairways, hallways, hatches, elevators and other access ways in the initial works design. It also requires that special thought be given to the physical layout of piping systems and components in the initial design, especially to components located above and below the ground level of buildings and to unusually large components. The complete path of removal from in-plant location, through hatches, doors and passageways, to a truck or other service vehicle should be checked out for each component.

143. Component Handling

The works shall have lifting and handling equipment available to aid in the maintenance and replacement of all components. In addition, the placement of structures and other devices, such as pad-eyes and hooks, to aid component handling shall be considered in the initial design. This is particularly important for large and/or heavy components which require special handling and lifting equipment. Means shall be provided for removal of components located above and below the ground level of buildings and other structures.

144. Essential Services

Essential services, such as water, compressed air, and electricity, shall be made available throughout the works where required for cleaning, maintenance, and repair work. To facilitate cleaning wetwells, tanks, basins and beds, water (such as protected potable water or works effluent) shall be supplied at these points by means of a pressurized water system with hydrants or hose bibbs having minimum outlet diameters of one inch.

150. ISOLATION OF HAZARDOUS EQUIPMENT

Equipment whose failure could be hazardous to personnel or to other equipment shall have means for isolation, such as shutoff valves, or shutoff switches and controls located away from the equipment to permit safe shutdown during emergency conditions.

200. SYSTEM DESIGN CRITERIA

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200. SYSTEM DESIGN CRITERIA

210. WASTEWATER TREATMENT SYSTEM

The wastewater treatment system includes all components from the bar screens and wastewater pumps to and including the disinfection facility.

211. System Requirements

The wastewater treatment system shall be designed to include the following.

211.1 Trash Removal or Comminution

The system shall contain components to remove or comminute trash and all other large solids contained in the wastewater.

211.2 Grit Removal

The system shall contain components to remove grit and other heavy inorganic solids from the wastewater. This requirement shall not apply to types of treatment works which do not pump or dewater sludge, such as waste stabilization ponds.

211.3 Provisions for Removal of Settled Solids

All components, channels, pump wells and piping prior to the degritting facility or primary sedimentation basin shall have provisions for cleaning out settled solids. The provisions shall enable manual or mechanical cleaning of equipment on a periodic basis without causing a controlled diversion or causing violation of effluent limitations.

211.4 Treatment Works Controlled Diversion

Wastewater treatment works shall be provided with a controlled diversion channel or pipe sized to handle peak wastewater flow. Actuation of the controlled diversion shall be by use of a gravity overflow. The overflow elevation shall be such that the maximum feasible storage capacity of the wastewater collection system will be utilized before the controlled diversion will be initiated. The controlled diversion flow shall be screened to remove large solids unless the wastewater flow has been previously screened. **The actuation of a controlled diversion shall be alarmed and annunciated** (see Paragraph 243 of this Technical Bulletin), **and the flow shall be measured and recorded.**

All Class I wastewater treatment works shall have a holding basin to augment the storage capacity of the collection system. The controlled diversion system and the holding basin shall be designed to permit the wastewater held up by the holding basin to be fully treated in the wastewater treatment works. The capacity of the holding basin shall be sized by the Grant Applicant based on the constraints and conditions applicable to that specific treatment works.

211.5 Unit Process Bypassing

The design of the wastewater treatment system shall include provisions for bypassing around each individual unit process. With the exception of the comminution facility, which shall be provided

with a means for bypassing regardless of the number of units, unit processes with three or more units need not have this provision, if the peak wastewater flow can be handled hydraulically with the two largest flow capacity units out of service. The bypassing system for each unit process shall be designed to provide control of the diverted flow such that only that portion of the flow in excess of the hydraulic capacity of the units in service need be bypassed. With the exception of the comminution facility, which shall have a gravity overflow, the actuation of all other unit process bypasses shall require manual action by operating personnel. All power actuated bypass valve operators shall be designed to enable manual actuation and shall be designed so that the valve will fail as is, upon failure of the power operator. **A disinfection facility having a bypass shall contain emergency provisions for disinfection of the bypassed flow.**

212. Component Backup Requirements

Requirements for backup components for the main wastewater treatment system are specified below for Class I, II, and III works.

Except as modified below, unit processes in the main wastewater treatment system shall be designed such that, with the largest flow capacity unit out of service, the hydraulic capacity (not necessarily the design-rated capacity) of the remaining units shall be sufficient to process the peak wastewater flow. There shall be system flexibility to enable the wastewater flow to any unit out of service to be distributed to the remaining units in service.

Equalization basins or tanks shall not be considered a substitute for component backup requirements.

212.1 Class I

The backup requirements for components in Class I works are:

212.1.1 Mechanically-Cleaned Bar Screens

A backup bar screen shall be provided. It is permissible for the backup bar screen to be designed for manual cleaning only. Works with only two bar screens shall have at least one bar screen designed to permit manual cleaning.

212.1.2 Pumps

A backup pump shall be provided for each set of pumps which performs the same function. The capacity of the pumps shall be such that with any one pump out of service, the remaining pumps will have capacity to handle the peak flow. It is permissible for one pump to serve as backup to more than one set of pumps. It is also permissible for the backup pump to be uninstalled, provided that the installed pump can be easily removed and replaced. However, at least two pumps shall be installed.

212.1.3 Comminution Facility

If comminution of the total wastewater flow is provided, then an overflow bypass with an installed manually- or mechanically-cleaned bar screen shall be provided. The hydraulic capacity of the comminutor overflow bypass shall be sufficient to pass the peak flow with all comminution units out of service.

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212.1.4 Primary Sedimentation Basins

There shall be a sufficient number of units of a size, such that with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 50 percent of the total design flow to that unit process.

212.1.5 Final Sedimentation Basins, Trickling Filters, Filters and Activated Carbon Columns

There shall be a sufficient number of units of a size, such that with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 75 percent of the total design flow to that unit process.

212.1.6 Activated Sludge Process Components

212.1.6.1 Aeration Basin

A backup basin shall not be required; however, at least two equal volume basins shall be provided. (For the purpose of this criterion, the two zones of a contact stabilization process are considered as only one basin.)

212.1.6.2 Aeration Blowers or Mechanical Aerators

There shall be a sufficient number of blowers or mechanical aerators to enable the design oxygen transfer to be maintained with the largest capacity unit out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced. However, at least two units shall be installed.

212.1.6.3 Air Diffusers

The air diffusion system for each aeration basin shall be designed such that the largest section of diffusers can be isolated without impairing the oxygen transfer capability of the system.

212.1.7 Chemical Flash Mixer

At least two mixing basins or a backup means for adding and mixing chemicals, separate from the basin, shall be provided. If only one basin is provided, at least two mixing devices and a bypass around the basin shall be provided. It is permissible for one of the mixing devices to be uninstalled, provided that the installed unit can be easily removed and replaced.

212.1.8 Flocculation Basins

At least two flocculation basins shall be provided.

212.1.9 Disinfectant Contact Basins

There shall be a sufficient number of units of a size, such that with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 50 percent of the total design flow to that unit process.

212.2 Class II

The Class I requirements shall apply except as modified below.

212.2.1 Primary and Final Sedimentation Basins and Trickling Filters

There shall be a sufficient number of units of a size such that, with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 50 percent of the design basis flow.

212.2.2 Components Not Requiring Backup

Requirements for backup components in the wastewater treatment system shall not be mandatory for components which are used to provide treatment in excess of typical biological (i.e., activated sludge or trickling filter), or equivalent physical/chemical treatment, and disinfection. This may include such components as:

Chemical Flash Mixer

Flocculation Basin

Chemical Sedimentation Basin

Filter

Activated Carbon Column

212.3 Class III

The Class I requirements shall apply except as modified below.

212.3.1 Primary and Final Sedimentation Basins

There shall be at least two sedimentation basins.

212.3.2 Activated Sludge Process Components

212.3.2.1 Aeration Basin

A single basin is permissible.

212.3.2.2 Aeration Blowers or Mechanical Aerators

There shall be at least two blowers or mechanical aerators available for service. It is permissible for one of the units to be uninstalled, provided that the installed unit can be easily removed and replaced.

212.3.2.3 Air Diffusers

The Class I requirements shall apply.

212.3.3 Components Not Requiring Backup

Requirements for backup components in the wastewater treatment system shall not be mandatory for components which are used to provide treatment in excess of primary sedimentation and disinfection, except as modified above. This may include such components as:

Trickling Filter

Chemical Flash Mixer

Flocculation Basin

Chemical Sedimentation Basin

Filter

Activated Carbon Column

213. Component Design Features and Maintenance Requirements

213.1 Provision for Isolating Components

Each component shall have provisions to enable it to be isolated from the flow stream to permit maintenance and repair of the component without interruption of the works' operation. Where practicable, simple shutoff devices, such as stop plates and sluice gates, shall be used.

213.1.1 Main Wastewater System Pump Isolation

The use of in-line valves to isolate the main wastewater pumps shall be minimized. It is permissible to place shutoff valves

on the suction and discharge lines of each pump. However, in such a case, alternate means shall be provided for stopping flow through the pump suction or discharge lines to permit maintenance on the valves.

Example: Pump outlet isolation and check valves are not needed if the pumps have a free discharge into an open channel rather than discharging into a pressurized discharge header. Pump inlet isolation valves can be maintained if the plant has a two compartment wetwell design and if the plant can continue operation (during the diurnal low-flow period, for example) with one part of the wetwell isolated.

213.2 Component Protection

213.2.1 Protection from Overload

Components or parts of components subject to clogging, blockage, binding or other overloads shall be protected from damage due to the overload. Examples of components requiring protection include the rake mechanism of bar screens, comminuting equipment, the grit-removal mechanism in degritting facilities, and sludge and scum arms of sedimentation basins.

213.2.2 Protection from Freezing

Components or parts of components which are wetted and subject to freezing shall be designed to ensure that the components will be operable during winter climatic conditions anticipated at the works. Examples of components or parts of components which may require protection include bar screens, comminuting equipment, the grit-removal mechanism in degritting facilities, mechanical aerators and the scum arm of sedimentation basins.

213.2.3 Protection from Up-Lift Due to Ground Water

In-ground tanks and basins shall be protected from up-lift due to ground water. If sufficient ballast is not provided in each tank or basin, ground water relief devices shall be provided.

213.3 Stop Plates

Consideration shall be given to providing mechanical operators or other mechanical assistance for stop plates which, due to their size or infrequent use, may not be easily removable by manual means alone.

213.4 Bar Screens

213.4.1 Provisions for Manual Cleaning

Manually-cleaned bar screens or mechanically-cleaned bar screens which can be manually cleaned shall have accessible platforms above the bar screen from which the operator can rake screenings easily and safely when the screens are in operation.

213.4.2 Provisions for Lifting and Handling Equipment

The design of the equipment and the works shall contain provisions for easily and safely lifting and handling all parts of a mechanically-cleaned bar screen. Special attention shall be given to the proper location of eyes and hooks located above the equipment to facilitate lifting and handling.

213.5 Comminution Equipment and Degritting Facility

All mechanical components shall be easily removable for maintenance and repair.

213.6 Sedimentation Basins

The main drive mechanism and reducing gears shall be maintainable and repairable without draining the basin. The number of other operating parts which require draining the basin for repair and maintenance shall be minimized.

213.7 Aeration Equipment

213.7.1 Component Maintenance

Mechanical aerators or air diffusers shall be easily removable from the aeration tank to permit maintenance and repair without interrupting operation of the aeration tank or inhibiting operation of the other aeration equipment.

213.7.2 Filtration of Air

If air is supplied to fine bubble diffusers, air filters shall be provided in numbers, arrangement and capacities to furnish at all times an air supply sufficiently free from dust to minimize clogging of the diffuser.

213.8 Chemical Mixing Basin and Flocculation Basin

213.8.1 Component Maintenance

The mixing and flocculating devices shall be completely removable from the basin to allow maintenance and repair of the device, preferably without draining the basin.

213.8.2 Chemical Feed Line Cleaning

Chemical feed lines shall be designed to permit their being cleaned or replaced without draining the mixing basin or interrupting the normal flow through the basin.

213.8.3 Provisions for Isolation

Isolation valves or gates for the mixing or flocculation basin shall be designed to minimize the problems associated with operation of these devices after long periods of idleness and the resulting buildup of chemical deposits. Access and means for cleaning debris and deposits which interfere with valve or gate closure shall be provided.

213.9 Filters and Activated Carbon Columns

There shall be easy access to the interior of carbon columns and filters to permit maintenance and repair of internal mechanisms

220. SLUDGE HANDLING AND DISPOSAL SYSTEM

This system includes all components and unit processes from the sludge pumps servicing the sedimentation basins to the final disposal of waste products, including ancillary components. Sludge disposal includes the special handling and treatment of sludge bypassing a normal stage of treatment. In some treatment works the system may also include processes such as recalcination of lime or regeneration of activated carbon.

221. System Requirements

The sludge handling and disposal system shall be designed to include the following.

221.1 Alternate Methods of Sludge Disposal and/or Treatment

Alternate methods of sludge disposal and/or treatment shall be provided for each sludge treatment unit operation without installed backup capability.

221.2 Provisions for Preventing Contamination of Treated Wastewater

All connections (sludge, scum, filtrate, supernatant, or other contaminated water flows), direct or indirect, from the sludge system to the wastewater treatment system shall be at a point in the wastewater treatment system to ensure adequate treatment.

222. Component Backup Requirements

Requirements for backup components for the sludge handling and disposal system are specified below and are applicable to all classes of treatment works.

222.1 Sludge Holding Tanks

Holding tanks are permissible as an alternative to component or system backup capability for components downstream of the tank provided the following requirements are met. The volume of the holding tank shall be based on the expected time necessary to perform maintenance and repair of the component in question. If a holding tank is used as an alternative to backup capability in a sludge treatment system which is designed for continuous operation, the excess capacity in all components downstream of the holding tanks shall be provided to enable processing the sludge which was retained together with the normal sludge flow.

222.2 Pumps

A backup pump shall be provided for each set of pumps which performs the same function. The capacity of the pumps shall be such that with any one pump out of service, the remaining pumps will have capacity to handle the peak flow. It is permissible for one pump to serve as backup to more than one set of pumps. It is also permissible for the backup pump to be uninstalled, provided that the installed pump can be easily removed and replaced. However, at least two pumps shall be installed.

222.3 Anaerobic Sludge Digestion

222.3.1 Digestion Tanks

At least two digestion tanks shall be provided. In addition, at least two digestion tanks shall be designed to permit processing all types of sludges normally digested.

222.3.2 Mixing Equipment

If mixing is required as part of the digestion process, then each tank requiring mixing shall have sufficient mixing equipment or flexibility in system design to ensure that all capability for mixing is not lost when any one piece of mechanical mixing equipment is taken out of service. It is permissible for the backup equipment not to be installed (e.g., a spare uninstalled digester gas compressor is permissible if gas mixing is used); not be normally used for sludge mixing (e.g., sedimentation basin sludge pumps may be used); or not be full capacity (e.g., two 50 percent-capacity recirculation pumps would comply with this requirement).

222.4 Aerobic Sludge Digestion

222.4.1 Aeration Basin

A backup basin is not required.

222.4.2 Aeration Blowers or Mechanical Aerators

At least two blowers or mechanical aerators shall be provided. It is permissible for less than design oxygen transfer capability to be provided with one unit out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced.

222.4.3 Air Diffusers

The air diffusion system for each aeration basin shall be designed such that the largest section of diffusers can be isolated without impairing the oxygen transfer capability of the system.

222.5 Vacuum Filter

Facilities designed for continuous operation of the sludge dewatering equipment shall be provided with at least two vacuum filters.

222.5.1 Auxiliary Equipment

Each vacuum filter shall be serviced by two vacuum pumps and two filtrate pumps. It is permissible for the backup to the normal vacuum or filtrate pump to be an uninstalled unit, provided that the installed unit can be easily removed and replaced; or to be a cross-connect line to the appropriate system of another vacuum filter.

222.6 Centrifuges

There shall be a sufficient number of centrifuges to enable the design sludge flow to be dewatered with the largest capacity centrifuge out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced.

Note: This criterion does not necessarily require additional equipment if the installed equipment is operated on less than a 24 hour-per-day basis and if the normal operating hours can be extended on the remaining units to make up the capacity lost in the unit out of service.

222.7 Incinerators

A backup incinerator is not required (see Paragraph 221.1 for requirements for alternate sludge disposal capability). Auxiliary incinerator equipment whose failure during incinerator operation could result in damage to the incinerator shall be provided with

backups (e.g., failure of a center shaft cooling fan could result in damage to the center shaft of a multi-hearth incinerator). In such cases, automatic actuation of the backup auxiliary equipment shall be provided.

223. Component Design Features and Maintenance Requirements

223.1 Provisions for Isolating Components

Each component shall have provisions to enable it to be isolated from the flow stream to permit maintenance and repair of the component without interruption of the works' operation. Where practicable, simple shutoff devices, such as stop plates and sluice gates, shall be used.

223.2 Component Protection

223.2.1 Protection from Overload

Components or parts of components subject to clogging, blockage, binding or other overloads shall be protected from damage due to the overload.

223.2.2 Protection from Freezing

Components or parts of components which are wetted and subject to freezing shall be designed to ensure that components will be operable during winter climatic conditions anticipated at the works.

223.2.3 Protection from Up-Lift Due to Ground Water

In-ground tanks and basins shall be protected from up-lift due to ground water. If sufficient ballast is not provided in each tank or basin, ground water relief devices shall be provided.

223.3 Stop Plates

Consideration shall be given to providing mechanical operators or other mechanical assistance for stop plates which, due to their size or infrequent use, may not be easily removable by manual means alone.

223.4 Aeration Equipment

223.4.1 Component Maintenance

Mechanical aerators or air diffusers shall be easily removable from the aeration tank to permit maintenance and repair without interrupting operation of the aeration tank or inhibiting operation of the other aeration equipment.

223.4.2 Filtration of Air

If air is supplied to fine bubble diffusers, air filters shall be provided in numbers, arrangement and capacities to furnish at all times an air supply sufficiently free from dust to minimize clogging of the diffuser.

223.5 Anaerobic Sludge Digester

At least three access manholes shall be provided in the top of the tank. One opening shall be large enough to permit the use of mechanical equipment to remove grit and sand. A separate side wall manhole shall also be provided.

223.6 Incinerators

There shall be easy access to the interior of incinerators to permit maintenance and repair of internal mechanisms. Multi-hearth incinerators shall have a manhole on each hearth level.

230. ELECTRIC POWER SYSTEM

The following criteria shall apply only to those portions of the system supplying power to vital components.

231. Power Sources

Two separate and independent sources of electric power shall be provided to the works from either two separate utility substations or from a single substation and a works based generator. If available from the electric utility, at least one of the works' power sources shall be a preferred source (i.e., a utility source which is one of the last to lose power from the utility grid due to loss of power generating capacity). In geographical areas where it is projected that sometime during the design period of the works, the electric utility may reduce the rated line voltage (i.e., "brown out") during peak utility system load demands, a works based generator shall be provided as an alternate power source, where practicable. As a minimum, the capacity of the backup power source for each class of treatment works shall be:

Class I Sufficient to operate **all** vital components, during peak wastewater flow conditions, together with critical lighting and ventilation.

Class II Same as Class I, except that vital components used to support the secondary processes (i.e., mechanical aerators or aeration basin air compressors) need not be included, as long as treatment equivalent to sedimentation and disinfection is provided.

Class III Sufficient to operate the screening or comminution facilities, the main wastewater pumps, the primary sedimentation basins, and the disinfection facility during peak wastewater flow condition, together with critical lighting and ventilation.

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Note: This requirement concerning rated capacity of electric power sources is not intended to prohibit other forms of emergency power, such as diesel driven main wastewater pumps.

232. Power Distribution External to the Works

The independent sources of power shall be distributed to the works transformers in a way to minimize common mode failures from affecting both sources.

Example: The two sets of distribution lines should not be located in the same conduit or supported from the same utility pole. The two sets of overhead distribution lines, if used, should not cross nor be located in an area where a single plausible occurrence (e.g., fallen tree) could disrupt both lines. Devices should be used to protect the system from lightning.

233. Transformers

Each utility source of power to the works shall be transformed to usable voltage with a separate transformer. The transformers shall be protected from common mode failure by physical separation or other means.

234. Power Distribution Within the Works

234.1 Service to Motor Control Centers

The internal power distribution system shall be designed such that no single fault or loss of a power source will result in disruption (i.e., extended, not momentary) of electric service to more than one motor control center associated with the Class I, II, or III vital components requiring backup power per Paragraph 231, above.

234.2 Division of Loads at Motor Control Centers

Vital components of the same type and serving the same function shall be divided as equally as possible between at least two motor control centers. Nonvital components shall be divided in a similar manner, where practicable.

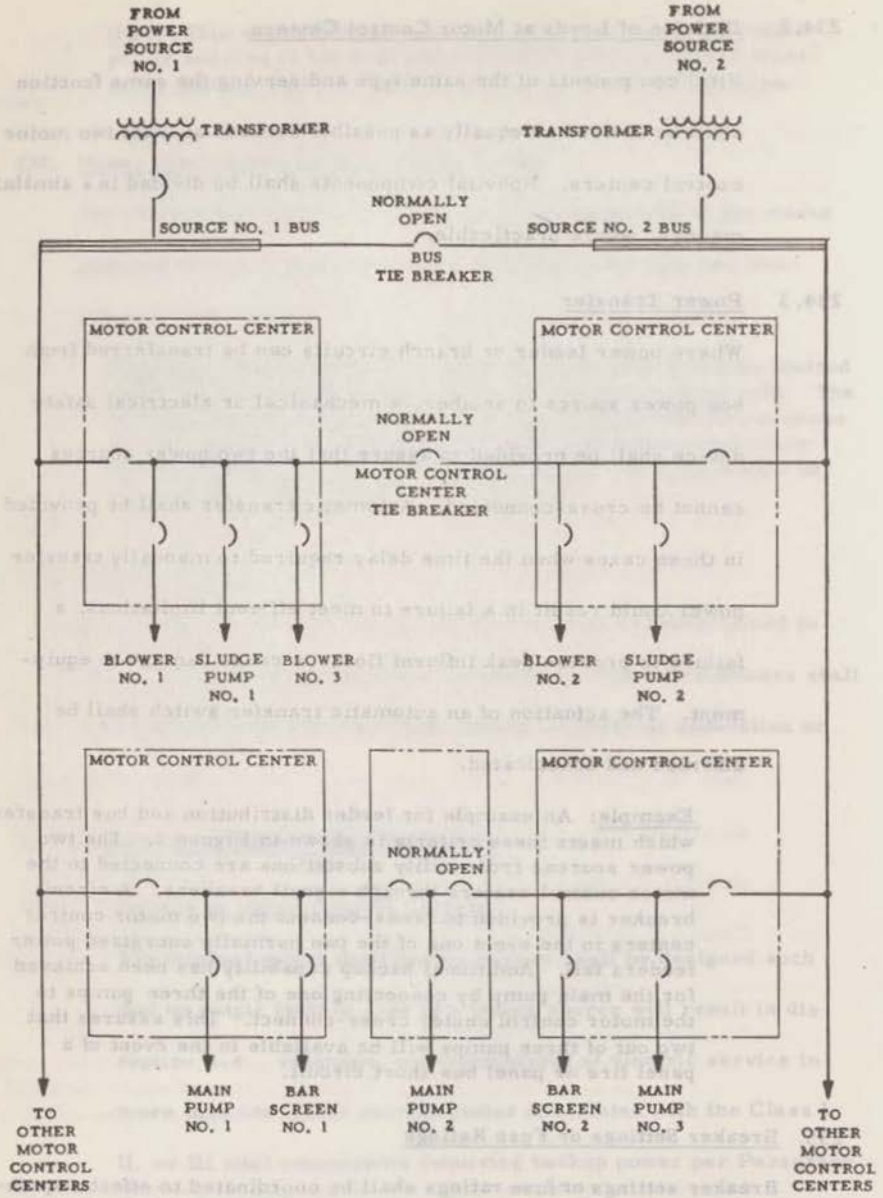
234.3 Power Transfer

Where power feeder or branch circuits can be transferred from one power source to another, a mechanical or electrical safety device shall be provided to assure that the two power sources cannot be cross-connected. Automatic transfer shall be provided in those cases when the time delay required to manually transfer power could result in a failure to meet effluent limitations, a failure to process peak influent flow, or cause damage to equipment. The actuation of an automatic transfer switch shall be alarmed and annunicated.

Example: An example for feeder distribution and bus transfer which meets these criteria is shown in Figure 1. The two power sources from utility substations are connected to the motor control centers through circuit breakers. A circuit breaker is provided to cross-connect the two motor control centers in the event one of the two normally energized power feeders fail. Additional backup capability has been achieved for the main pump by connecting one of the three pumps to the motor control center cross-connect. This assures that two out of three pumps will be available in the event of a panel fire or panel bus short circuit.

235. Breaker Settings or Fuse Ratings

Breaker settings or fuse ratings shall be coordinated to effect sequential tripping such that the breaker or fuse nearest the fault will clear the fault prior to activation of other breakers or fuses to the degree practicable.



FEEDER DISTRIBUTION AND POWER TRANSFER

FIGURE 1

236. Equipment Type and Location

Failures resulting from plausible causes, such as fire or flooding, shall be minimized by equipment design and location. The following requirements apply:

236.1 Switchgear Location

Electric switchgear and motor control centers shall be protected from sprays or moisture from liquid processing equipment and from breaks in liquid handling piping. Where practicable, the electric equipment shall be located in a separate room from the liquid processing equipment. Liquid handling piping shall not be run through this room. The electric switchgear and motor control centers shall be located above ground and above the one hundred (100) year flood (or wave action) elevation.

236.2 Conductor Insulation

Wires in underground conduits or in conduits that can be flooded shall have moisture resistant insulation as identified in the National Electric Code.

236.3 Motor Protection from Moisture

All outdoor equipment shall be adequately protected from the weather. Exposed outdoor motors shall be totally enclosed design. Motors located indoors and near liquid handling piping or equipment shall be, at least, splash proof design. Consideration shall be given to providing heaters in motors located outdoors or in areas where condensation may occur.

The following criteria shall apply to motors (and their local controls) associated with vital components. All outdoor motors, all large indoor motors (i.e., those not readily available as stock items from motor suppliers), and, where practicable, all other indoor motors shall be located at an elevation to preclude flooding from the one hundred (100) year flood (or wave action) or from clogged floor drains. Indoor motors located at or below the one hundred year flood (or wave action) elevation shall be housed in a room or building which is protected from flooding during the one hundred year flood (or wave action). The building protection shall include measures such as no openings (e.g., doors, windows, hatches) to the outside below the flood elevation and a drain sump pumped to an elevation above the flood elevation.

236.4 Explosion Proof Equipment

Explosion proof motors, conduits, switches and other electrical equipment shall be used in areas where flammable liquid, gas or dust may be present.

236.5 Routing of Cabling

To avoid a common mode failure, conductors to components which perform the same function in parallel shall not be routed in the same conduit or cable tray. Conduits housing such cables shall not be routed in the same underground conduit bank unless the conduits are protected from common mode failures (such as by encasing the conduit bank in a protective layer of concrete).

236.5 Motor Protection

Consideration shall be given to the installation of temperature detectors in the stator and bearings of large motors in order to give an indication of overheating problems.

237. Provisions for Equipment Testing

Provisions shall be included in the design of equipment requiring periodic testing, to enable the tests to be accomplished while maintaining electric power to all vital components. This requires being able to conduct tests, such as actuating and resetting automatic transfer switches, and starting and loading emergency generating equipment.

238. Maintainability

The electric distribution system and equipment shall be designed to permit inspection and maintenance of individual items without causing a controlled diversion or causing violation of the effluent limitations.

240. INSTRUMENTATION AND CONTROL SYSTEM

These criteria cover the requirements for the instrumentation and control systems:

241. Automatic Control

Automatic control systems whose failure could result in a controlled diversion or a violation of the effluent limitations shall be provided with a manual override. Those automatic controls shall have alarms and annunciators to indicate malfunctions which require use of the manual override. The means for detecting the malfunction shall be independent of the automatic control system, such that no single failure will result in disabling both the automatic controls and the alarm and annunciator.

242. Instrumentation

Instrumentation whose failure could result in a controlled diversion or a violation of the effluent limitations shall be provided with a back-up designed to perform the same function from and including the sensor to and including the readout. No single failure shall result in disabling both sets of parallel instrumentation.

243. Alarms and Annunciators

Alarms and annunciators shall be provided to monitor the condition of equipment whose failure could result in a controlled diversion or a violation of the effluent limitations. Alarms and annunciators shall also be provided to monitor conditions which could result in damage to equipment or hazards to personnel. The alarms shall

sound in areas normally manned and near the equipment. The combination of alarms and annunciators shall be such that each announced condition is uniquely identified.

244. Alignment and Calibration of Equipment

Equipment shall be designed to permit alignment and calibration without requiring a controlled diversion or a violation of the effluent limitations.

250. AUXILIARY SYSTEMS

The auxiliary systems include typical systems such as:

° Drain system, for

- Components
- Systems
- Treatment works

° Compressed air system, for

- Pneumatic controls
- Pneumatic valve operators
- Hydropneumatic water systems
- Air lift pumps

° Service water systems, for

- High pressure water
- Gland seals
- Potable water
- General service

° Fuel supply system, for

- Digester heaters
- Incinerators
- Building heat

° Lubrication oil system, for

- Pumps
- Blowers
- Motors

° Chemical supply and addition system, for

- Disinfection
- Sludge conditioning
- Chemical treatment of wastewater

The reliability requirements of these systems are dependent on the function of each system in the wastewater treatment works. If a malfunction of the system can result in a controlled diversion or a violation of the effluent limitations, and the required function cannot be done by any other means, then the system shall have backup capability in the number of vital components (i.e., pumps, motor, mechanical stirrers) required to perform the system function. If the system performs functions which can be performed manually or by some other means, then backup components shall not be required.

Example: A compressed air system supplying air to air lift pumps, which are pumping return activated sludge from the secondary sedimentation basin to the aeration tanks, is an example of an auxiliary system whose failure could degrade effluent quality. If no other means for supply air or pumping sludge were available, then this system would be required to have backup vital components, such as compressors.

Example: If the compressed air system only supplied air to pneumatic controls which could not affect effluent quality, then the system would not require any backup components.

251. Backup Components

Auxiliary systems requiring backup components shall have a sufficient number of each type of component such that the design function of the system can be fulfilled with any one component out of commission. Systems having components of different capacities shall meet this criterion with the largest capacity component out of commission.

It is permissible for the backup component to be uninstalled, provided that the installed component can be easily removed and replaced. However, at least two components shall be installed.

Example: A chemical addition system supplying chlorinated water to the contact chamber and having six chlorinators and one water supply pump which just meets capacity requirements, would be required by this criterion to have one additional chlorinator and one additional pump.

252. Requirements for System, Component and Treatment Works Drains and Overflows

All system, component and works drains and overflows shall discharge to an appropriate point in the main wastewater treatment process to ensure adequate treatment. Drains flowing to two component wetwells shall be designed to discharge to either compartment of the wetwell.

252.1 Works Drains

The works shall have sufficient drains to enable all spilled or leaked raw or partially treated wastewater, sludge, chemicals or any other objectionable substance to freely drain out of the area of concern. Special attention shall be given to specifying sufficient cleanouts in drain lines which are likely to clog (e.g., drain lines handling lime). All floors within buildings and structures shall be sloped to permit complete draining.

252.2 Sump Pumps

Sump pumps shall be of a non-clog type. Sump pumps are considered vital components and each sump shall be provided with two full capacity sump pumps.

252.3 Equipment Overflows

All equipment located within buildings and which can overflow shall be equipped with an adequately sized overflow pipe. The overflow shall be directed to a gravity drain.

252.4 Surface Water Drains

The works grounds shall be graded and drains provided in order to prohibit surface water from draining into pump wells, tanks, basins, beds, or buildings. Drains which handle uncontaminated waters only shall not be connected to the contaminated drain system.

252.5 Component Dewatering

All pump wells, tanks, basins and beds, with the exception of aeration tanks, shall be designed to enable complete dewatering in a reasonable length of time in order to minimize the component downtime for maintenance or repairs. Where practicable, these components shall have sloped bottoms to enable the units to be completely drained.

252.6 Drain Backflow

Drains shall be designed to prevent backflow from other sources which would cause flooding or violation of the effluent limitations. The drain system shall be designed to prevent the entrance of storm water during the one hundred year flood (or wave action) condition.

253. Continuity of Operation

The failure of a mechanical component in an auxiliary system shall not result in disrupting the operating continuity of the wastewater treatment system or sludge handling and disposal system to the extent that flooding, failure, or malfunctioning of components in those systems results.

Example: A seal water system with normal and backup water supplies must transfer automatically to the backup upon failure of the normal supply in order to protect the equipment which needs the seal water to prevent damage.

254. Emergency Fuel Storage

If a vital component requires a continuous supply of fuel for operation, then the fuel supply system design shall include provisions for fuel storage or a standby fuel source. The capacity of stored gaseous or liquid fuel shall be determined by the Grant Applicant based on a plausible downtime of the normal fuel supply and the expected consumption rate. The emergency system shall be physically separate from the normal fuel supply up to its connection to the fuel distribution system within the works.

300. DESIGN REPORT SUBMITTAL REQUIREMENTS

(This section is in preparation. When completed, this section will detail the information, via a Design Report, which must be submitted to EPA by the Grant Applicant to demonstrate compliance with the reliability design criteria identified in this Technical Bulletin. It is anticipated that the Design Report will be submitted after the treatment works design is established, but before many of the specific design details are completed.)

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SAM STEIGER, ARIZ.

225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

October 31, 1972

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Recently your agency provided to us copies of EPA's effluent guidelines for the Refuse Act permit program. A list of the guidelines provided to us is enclosed.

In discussing these guidelines with officials of EPA, we learned that EPA has held a number of meetings and discussions with various industry representatives, trade associations, and individual company officials to review these guidelines. For example, in the case of the guidelines for the petroleum refinery industry, we understand that meetings were held with the American Petroleum Institute and other oil industry officials. Similarly, in the case of the mining and milling industry, meetings and discussions were held with the American Mining Congress and representatives of various mining and milling firms. In some cases, there have also been multiple meetings with various industry and trade association groups. In many instances, representatives of the Commerce Department have attended these meetings.

Recently, the guidelines have been sent to individual companies for comment through the National Industrial Pollution Control Council.

We also understand that, in the case of fish hatchery wastes, EPA has consulted with the Bureau of Sport Fisheries and Wildlife.

We find, however, that EPA has made no similar effort to obtain the comments from the Bureau of Sport Fisheries and Wildlife, NOAA, or State agencies on all of these guidelines. Even more importantly, EPA officials tell us that no effort has yet been made to obtain the views and comments of any national or regional environmental organization such as the Sierra Club, the Wilderness Society, the National Wildlife Federation, the Audubon Society, Friends of the Earth, the Izaak Walton League, Trout Unlimited, Environmental Action, the Environmental Policy Center, and the League of Women Voters.

A recent agreement between EPA's Region V office and the Michigan Water Resources Commission specifically states that EPA is developing these guidelines "for a number of industrial categories, reflecting effluent control levels obtainable through the application" of the best practicable control technology. The agreement notes that many of these guidelines are available in final form and the remainder are expected. The agreement contemplates that these guidelines will be used in developing conditions for permits in consultation with the State. As a matter of fact, the agreement lists 129 companies in the State of Michigan for which draft conditions have been or are being prepared pursuant to these guidelines. Thus, the guidelines are in actual use by the regional offices of EPA without any opportunity for environmental groups or the above stated Federal agencies to review them. Yet industry has had a wide opportunity to comment on each of them and, in fact, EPA has made a number of changes as a result of those comments.

In this regard, we are enclosing a copy of a letter which we sent on October 30 to EPA's Region V Administrator, in which we criticized this agreement because it essentially precluded public participation and review by the above Federal agencies of the conditions themselves. Now we find that the public has been effectively precluded from commenting on the basic guidelines upon which these conditions are largely based.

We have no objection to your obtaining the comments and views of the various industries affected by these guidelines. But we think it is imperative that EPA provide the same opportunity for comment and review to national and regional environmental groups, to the above Federal agencies, to the States, and to the public. We recognize, of course, that an opportunity for such comments is required when EPA proposes an effluent limitation under Public Law 92-500. But in the interim, these guidelines are being used by EPA without such comments by the public. We think that section 101(e) of Public Law 92-500 requires that the public participate in the development of these guidelines, too.

Please continue to provide to us updated versions of the enclosed guidelines, as well as new guidelines as they are developed.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

Enclosure

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EPA's

Effluent Limitation Guidance for Refuse Act Permit Program (October 1972)

Guidelines for:

1.	PULP AND PAPER INDUSTRY	June 9, 1972
2.	STEEL INDUSTRY	July 12, 1972
3.	ALUMINUM INDUSTRY	October 1972
4.	BEET SUGAR PROCESSING INDUSTRY	June 13, 1972
5.	BEVERAGE INDUSTRY	
6.	CANNED AND FROZEN FRUITS AND VEGETABLES INDUSTRY	July 27, 1972
7.	CEMENT, LIME, GYPSUM, ASBESTOS AND FLAT GLASS INDUSTRIES	September 21, 1972
8.	THE DAIRY PRODUCTS INDUSTRY	August 4, 1972
9.	METAL FINISHING INDUSTRY	September 1972
10.	INSULTATION FIBER GLASS INDUSTRY	September 5, 1972
11.	MEAT PRODUCT INDUSTRY	July 27, 1972
12.	MINING AND MILLING INDUSTRY	July 29, 1972
13.	MOTOR VEHICLES INDUSTRY	August 14, 1972
14.	PETROLEUM REFINING INDUSTRY	October 1972
15.	TEXTILE INDUSTRY	September 1972

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NINETY-SECOND CONGRESS

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CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

October 30, 1972

Mr. Francis T. Mayo
Regional Administrator
Region V
Environmental Protection Agency
1 North Wacker Drive
Chicago, Illinois 60606

Dear Mr. Mayo:

We understand that you signed an agreement on September 11, 1972, with the Michigan Water Resources Commission which sets forth EPA's policy requirements for Refuse Act permits, including procedures for processing permit applications and for securing revised stipulations. Your press release of September 11 states that "one of the major thrusts" of this agreement is to "maximize state participation."

The agreement calls for the drafting of "permit conditions" by EPA which are then transmitted to the State. The State has 15 days to notify EPA whether or not "compliance with outstanding Stipulations and Orders of the Michigan Water Resources Commission would secure compliance" with EPA's draft permit conditions. If EPA concurs, the State then notifies the polluter that "its present Stipulation or Order is believed acceptable to" EPA and advises the polluter to "write" to EPA "stating its intention to comply." EPA then must "acknowledge" the polluter's "undertaking and encourage his proceeding."

The agreement is silent on what happens if EPA does not concur with the State. But it does state that if the parties -- presumably this means EPA and the State -- jointly determine that "compliance with an outstanding Stipulation or Order would not satisfy" EPA's permit requirements, the State must draft a proposed Stipulation" and submit it to EPA "within 30 days of such determination." EPA must respond 30 days thereafter. If EPA concurs, the State sends the proposed Stipulation to the polluter for his assent. If he refuses, then EPA and the State "shall mutually consult as to the taking of enforcement action."

There are several features of this agreement that concern us.

First, the agreement, unlike the Corps of Engineers regulations concerning the Refuse Act Permit Program, makes no provision for public participation in the establishment of adequate conditions or in the adequacy of the various determinations and concurrences called for in the agreement. In short, these matters are to be handled by EPA and the State under tight time tables without any opportunity for public review. We think such a procedure does not properly protect the public interest in the formulation and adoption of the conditions and stipulations.

Indeed, such a procedure is the antithesis of the policy established by section 101(e) of S.2770 -- The Federal Water Pollution Control Act Amendments of 1972 -- which became Public Law 92-500 on October 18, 1972. That section states:

> "(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

In discussing this section, Congressman Dingell said (Cong. Rec. of Oct. 18, 1972 (daily issue) pp. H10271-H10272):

> "...I reiterate my comments on the importance of section 101(e) of this bill which encourages public participation in the development, revision and enforcement of various actions taken under this statute. I sincerely hope that the Administrator understands that this applies across the board, including the establishment of the permit program under section 402 of the bill."

It is true that EPA's "conditions" will eventually be available for public comment under the Refuse Act or section 402 of Public Law 92-500. But by that time the polluter will already have agreed and undertaken to comply with them through the State action. Any public comment then will have little value.

Second, this procedure, which avoids the requirements of the Corps' regulations, eliminates any opportunity for review of these conditions, etc., by either the Bureau of Sport Fisheries and Wildlife or the National Oceanic and Atmospheric Administration, under the Fish and Wildlife Coordination Act. The Act will continue to apply to section 402 of the FWPC Act.

We think the agreement should be revised to provide for public participation and for review under the Fish and Wildlife Coordination Act.

Third, section III.D. of the agreement provides that before enforcement actions are taken "the parties shall mutually consult." Although section IV.D states that the agreement shall not "be construed to bar" either EPA or the State "from taking appropriate" enforcement "measures", the agreement fails to incorporate the caveat expressed by EPA's General Counsel, Mr. John R. Quarles, Jr., in his memorandum of April 13, 1972 to all Regional Administrators, as follows:

> "If any [enforcement] action is questioned by a State, each Region should clearly and unequivocally communicate to State counterparts our policy that EPA will initiate enforcement action whenever in our professional judgement the circumstances so require. Needed enforcement actions must not be restricted or delayed merely to avoid objections by State officials."

Please provide to us a copy of each of the "Draft Conditions" sent to the State and the "Stipulations drafted by the State and sent to EPA for review" regarding the "Major Dischargers" listed on the "sheets" attached to the September 11 Agreement.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 4 1972

THE ADMINISTRATOR

Honorable Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of October 31, cosigned by Congressman Vander Jagt, concerning Effluent Guidance provided to our regions for use in the Refuse Act Permit Program.

As you have pointed out, we have, since June 1972, issued Effluent Guidance to the regions on a number of specific industrial categories. In addition to the 15 already furnished to you, four others are enclosed for your consideration. As you have requested, any updated versions or additional guidance issued will be provided.

The materials you have in hand were prepared as guidance documents, designed to provide additional information to regional staffs as they consider the conditions appropriate to each permit applied for under the Refuse Act Permit Program. Because of the manner in which this material was to be used, we elected to develop it with only the concerned industry commenting on our initial drafts. The opportunity for public input was anticipated to come as part of the public notice process through which comments would be solicited on the conditions and effluent limitations proposed for specific discharges.

Knowledge of the effort of the Environmental Protection Agency on effluent limitations was widespread due to articles in Trade Association magazines and the news media. The States were advised of this effort this past June. Although copies have been made available upon request to numerous persons and organizations capable of making technical evaluations of the material, few if any comments have been received on the guidance by our offices.

At the request of the Department of the Interior, EPA participated in discussions relating to the proper handling of waste from fish hatcheries and farms. EPA has not proceeded to formalize any guidance for this industrial category.

The participation thus far by the Department of Commerce in this effort has been by informal invitation to the seminars held with the regional personnel for the purpose of more fully explaining the derivation and application of the guidance to specific permits. The Department's role was one of an observer. To date, we have not received any written comments or other reactions relating to the wide distribution of the Effluent Guidance by their offices.

We are certainly cognizant of the role of the public as we fulfill our obligations under the new legislation. The guidelines for State permit programs published in the Federal Register for comment on November 11, as well as the Regulations being developed for conduct of the National Permit Program by EPA, give due regard to the public sector.

We would welcome any comments or suggestions you might have regarding these and other actions necessary to properly implement the new legislation.

Sincerely yours,

Bill

William D. Ruckelshaus
Administrator

Enclosures

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225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

December 11, 1972

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

Pursuant to section 304(h)(2) of the Federal Water Pollution Control Act, as amended by Public Law 92-500, EPA published on November 11, 1972 (37 F.R. 24088) proposed guidelines "establishing the minimum procedural and other elements" of any permit program administered by a State pursuant to section 402 of the FWPCA.

There are several areas where we think a revision of the guidelines is required.

1. Approval of State Program. Section 101(e) of the new law requires public participation "in the development...of any...program established by... any State under this Act." This, of course, applies to the State program developed and approved under section 402 of this Act.

Section 124.2(b) of the guidelines merely states that a "submitted" State program which "conforms" to these guidelines and "meets" statutory requirements "shall be approved by the Administrator." Despite the plain language of section 101(e) of the law, the guidelines have no provision for public participation in the development and approval of this "program" either at the State or Federal level.

Sections 124.31 thru 124.37 of the proposed guidelines (entitled "Subpart D-Notice and Public Participation") deal only with public participation in the approval or granting of a permit -- they do not deal with the development and approval of the program which the State must initially submit to EPA for approval. Section 124.73 of the proposed guidelines deals with enforcement of the NPDES program. No mention is made in that section or elsewhere in the guidelines of the section 101(e) requirement of "public participation" in the "enforcement of any regulation, standard, effluent limitation, plan, or program."

On several occasions, staff members of EPA have assured our subcommittee staff, rather vaguely, that no State program will be approved without an opportunity for the public to review and comment, orally and in writing, on the State's program as "submitted" to EPA. But EPA has not yet indicated how or when this will happen. Nor has EPA indicated what the States must do in this regard.

We request that these guidelines be revised to set forth clearly the obligations of the States and EPA in providing for public "participation" in the development and approval of such programs, and in the enforcement of the NPDES program and related matters.

2. Tentative Determinations - Section 124.31 of the proposed guidelines requires that States, etc., prepare "tentative determinations" prior to any public notice "of the proposed issuance or denial" of a permit. The guidelines set forth several matters that must be included in the determinations. They do not, however, require that the determinations include a reference to alternatives to the proposed discharge, such as land disposal of the wastes or recycling (cf. Secs. 201(d) and (e) of Act). If these or other alternatives exist they should be referred to, together with a brief statement as to why they probably will not be adopted.

We request that section 124.31(b) of the proposed guidelines be amended to require that the determination list alternatives to the discharge and a brief discussion as to the merits and demerits of each one.

3. Public Notice - Section 124.32(b) provides that a minimum of 30 days shall be afforded for comment by "interested persons " on any permit application. Section 124.34(d) provides that a State must establish a procedure whereby the public notice will be mailed "upon request" to other "Federal, State, or local" agencies, and for mailing to such agencies "upon specific request copies of fact sheets." Section 124.32(a)(2) provides that the public notice "shall be mailed to any person or group upon request."

Neither section 134.32,nor section 124.34 requires the States to provide for the distribution of the "fact sheets" to the public. Yet these are most important documents. They, for example, contain the "tentative determinations" mentioned above, Presumably, they could be obtained if a specific request was made. But the delay inherent in such procedure could result in depriving the public and the above agencies, who can obtain them only by a "specific" request, of adequate time to analyze the permit application and the fact sheets.

We request that the guidelines be revised to require that the "fact sheets" accompany each public notice mailed out to any person, group, or agency that is on the mailing list established pursuant to section 124.32(a)(3) of the

guidelines. We also request that the guidelines be amended to require that each public notice, together with a fact sheet, be mailed to the appropriate State fish and game agencies and the appropriate regional offices of NOAA and the Bureau of Sport Fisheries and Wildlife.

4. Fact Sheets - Section 124.33(b) of the proposed guidelines requires that the fact sheets contain a "quantitative description of the discharge described" in a permit application, including among other things, the following:

> "(2) For Thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit." (Underlining supplied.)

We do not understand why the above quote is qualified by the clause underlined above. We note that section 125.33(b)(2) of EPA's draft regulations (p. 38), which you approved on November 27, 1972, and which are now pending at the Office of Management and Budget, does not contain the above qualifying clause.

(a) We would like to know why EPA's proposed guidelines contain this qualifier and EPA's proposed regulations do not.

(b) In our letter to you of December 6, 1972 concerning the discharge of Potlatch Forests, Inc., of Lewiston, Idaho, we noted the concern of the Bureau of Sport Fisheries and Wildlife that, with secondary treatment, PFI's "temperatures of discharge will be 10 - 50°F above ambient." Would Idaho (under the proposed guidelines) be required to show this temperature change in PFI's discharge? If not, why not?

If the answer to (b) is no, we request that section 124.33(b)(2) of the proposed guidelines be amended to conform to EPA's proposed regulations of November 27, 1972.

We also request that section 124.33 of the proposed guidelines be amended to require the listing in the fact sheet of source studies and documents consulted or relied upon in making "tentative determinations."

5. Public Access to Information - Section 402(b)(2) of Public Law 92-500 requires that EPA, in approving a State permit program, require compliance with "all applicable requirements of section 308 of the Act." Section 308(b) of the law provides that "Any records, reports, or information obtained under this section....shall be available to the public," except where there is a satisfactory showing that, "if made public," they "would divulge matters or processes entitled to protection as trade secrets."

Despite this, section 124.35(a) of the proposed guidelines provides that only the permit forms and comments made thereon "be available to the public". It allows the Director of the State program "discretion" as to whether or not there shall be public disclosure of "other records, reports, plans, or information" obtained pursuant to this program.

Section 308 of the Federal Water Pollution Control Act allows no such discretion.

We request that the second sentence of section 124.35(a) of the proposed guidelines be amended to conform with the mandatory public disclosure provisions of section 308 of the law. We note that the second sentence of section 125.35(a) of EPA's proposed (but unpublished) regulations (p. 49) of November 27, 1972, quite properly does not provide the discretion afforded by the proposed guidelines. These provisions in the proposed guidelines and EPA's proposed regulations on public access to information are both based on section 308 of the statute. There is no basis in that section for allowing the NPDES Director broad discretion under the guidelines to withhold information.

6. Adequate State Authority. Section 402(b) of the Act authorizes you to approve the State's permit program only if you determine "that adequate authority" exists for the State to do all the acts specified in subparagraphs (1) through (9) of section 402(b).

Section 124.45 of the proposed guidelines specifies that the State's procedures "must insure" that the permit issued by the State include various terms and conditions which contain requirements similar to many (but not all) of those specified in subparagraphs (1) through (9) of section 402(b) of the Act.

It is not enough for the State to incorporate those requirements in its permits. The Act requires you to be satisfied that the State has adequate authority to do the things specified in subparagraphs (1) through (9) of section 402(b). The fact that a provision is incorporated in a permit would, of course, enable the State to contend that the permittee's acceptance thereof gives the State, by contract, authority to require the permittee to comply with that provision. However, there is also judicial authority which holds that a Government agency cannot include requirements beyond its statutory authority.

Hence, we request that the proposed guidelines specify (in addition to section 124.45 as to the contents of the permit) that the State must satisfy EPA that its State law is "adequate authority" to do or require the things

enumerated in subparagraphs (1) through (9) of section 402(b) of the Act without reliance upon its contract with the permittee. In this regard, we note that section 402(b) of the Act requires that each State must "submit a statement from the attorney general [or other appropriate legal counsel]...that the laws of such State...provide adequate authority to carry out the described program." The States should be informed in these guidelines that its "statement" must clearly show that adequate statutory authority exists to carry out fully all of subparagraphs (1) through (9) of section 402(b).

7. Schedules of Compliance - Section 124.44(d) of the proposed guidelines requires that the NPDES State Director notify the EPA Regional Administrator within 30 days after an interim or final compliance date has elapsed and the permittee failed or refused to comply with such date.

We request that this period be cut in half. We see no reason for simply stretching out this period of notice.

We also request that the proposed guidelines be amended to require, pursuant to section 101(e) of the Act, public notice of (a) any failure to comply with such dates, or (b) any violation of an effluent standard or limitation established under the Act, or(c) any other order issued by EPA or the State with respect to such standard or limitation.

8. EPA Review of permits - Section 124.46 appears to leave to some unspecified future "agreement" between the States and each EPA Regional Administrator the details of EPA's review of State permits. This is unsatisfactory.

Section 124.46(c) appears to provide that this "agreement" will even cover the waiver authority set forth in section 402(d)(3), as to individual permit applications, and in section 402(e) as to categories of point sources. We note that section 402(f) of the law requires that EPA first "promulgate regulations establishing categories of point sources which he determines shall not be subject to "EPA review under section 402(d). This has not been done.

The statute places a positive duty on EPA to review permit applications for categories of point sources for which a waiver under section 402(e) has not been issued pursuant to regulations under section 402(f). These guidelines should clearly spell out how EPA plans to carry out that duty and the extent to which the public will be allowed to participate in this review under section 101(e) of the Act.

9. Environmental Impact Statements - Section 511(c)(1) of Public Law 92-500, referring to permits issued under section 402, provides that, except for permits for new source discharges as defined in section 306 of the Act, environmental impact statements are not required for the issuance of such permits. The Act thus clearly requires such impact statements for "issuance of a permit under section 402" of the Act for a new source discharge. Such permits

can be issued either by EPA or the State, but the Act makes no distinction between those issued by EPA and those issued by a State under a program approved by EPA.

The proposed guidelines fail to make any provision for environmental impact statements with respect to a permit issued by a State for a new source discharge. This failure is perhaps based on the assumption that the State's issuance of the permit is wholly a State action, and, of course, the environmental impact statement requirement relates to an "action of the Administrator" which involves "a major Federal action significantly affecting the quality of the human environment". But such assumption fails to take into account the fact that the Administrator does participate in the issuance of a State permit in at least three ways.

First, paragraph (1) of section 402(d) requires that a State "transmit" to EPA all permit applications, notices of "every action related to consideration" of those applications, and all permits "proposed to be issued". Paragraph (2) specifically gives EPA the opportunity to "object" to the issuance of any permit. Thus, whenever EPA "objects" to a State permit, there is an "action of the Administrator" to which the provisions of NEPA are applicable where new sources of discharge are involved.

Second, paragraph (3) of section 402(d) of the Act authorizes EPA to "waive" paragraph (2) "as to any permit application". Here, too, EPA's exercise of such waiver is an Administrator's action to which the provisions of NEPA are applicable where new sources of discharge are involved.

Third, the Act clearly contemplates that the Administrator will review all permit applications and State permits issued under section 402(d) to enable EPA to decide whether or not to "object" or grant a waiver. Such action is certainly action by the Administrator to which the provisions of NEPA are applicable when new sources of discharge are involved.

In addition, we believe that the Administrator's action in granting, under section 402(e), a waiver of the requirements of section 402(d) as to categories of new point sources would clearly be a major Federal action affecting the human environment for which a NEPA statement would be required.

We therefore request that the guidelines be revised to indicate the necessity for environmental impact statements in the circumstances discussed above.

10. Duration and Reissuance of a Permit. Section 124.51 of the proposed guidelines requires that a permit "shall have a fixed term not to exceed 5 years."

We believe that this section should be revised to include the material stated therein as a "Comment". If we understand the comment correctly, each permit term must, as a minimum, be "dictated" by the effluent standards

and limitations set forth in the Act. Section 301 of the Act requires that effluent limitations for each point source require application of "the best practicable control technology currently available" by July 1, 1977. We think therefore the guidelines should make it clear that no permit that does not, as a minimum, meet this requirement shall be issued for a term beyond this date.

We also think that the proposed guidelines should require that any renewal of the permit for a term extending beyond that date shall be conducted in the same manner as the application itself.

11. Monitoring. Section 124.61(a) of the proposed guidelines states that a discharge "may" be subject to such monitoring requirements as may reasonably be required by the State. Section 125.27 of EPA's November 27, 1972, proposed regulations, however, states that any permit "shall" be subject to such requirements as EPA may reasonably require.

We request that the proposed guidelines be revised to conform with EPA's proposed regulations in this regard. Under section 308(a) of the Act, no discretion is allowed the permittee in regard to the monitoring of his discharge as required by EPA or a State.

Both the proposed guidelines and EPA's proposed regulations require that monitoring records be held by the permittee for a minimum of 3 years.

We request that both documents specify retention for the term of the permit, plus the period during which a permit renewal is under consideration. Such records should be available when a permit is up for renewal.

The proposed guidelines do not specify that all such monitoring records shall be available to the public as required by section 308 of the Act. The Natural Resources Defense Council, Inc., in comments dated November 22, 1972, notes that "several state statutes...make it a criminal offense for public officials to divulge certain kinds of discharge data".

The existence of such a State statute would preclude the Administrator from approving that State's permit program since the State program would not be in "compliance" with "all applicable requirements of section 308" of the FWPC Act. It is for this reason that the proposed guidelines should clearly state that all such records shall be available to the public, and State law must authorize such disclosure, or, at least, not prevent it in any way.

12. Agency Board Membership. We are concerned about some of the definitions of terms in section 124.94 of the proposed guidelines.

Section 304(h)(2)(D) of the Act requires that these guidelines include a "requirement that no board or body which approves permit applications

or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit."

Section 124.94(a) of the proposed guidelines defines the term "board or body" so as to exclude the NPDES Director and any of his employees from the coverage of the Act, even though they may be members of that "board or body" and receive "a significant portion" of their income "directly or indirectly" from permittees or applicants for permits. This exclusion seems incredible. Presumably, the Director and his employees, as State employees, would be subject to the State's conflict-of-interest laws which generally preclude the conflict inherent in their receipt of such income. In such case, the exclusion is of no use. It is even more incredible because there is no basis in the law for such an exclusion. The law refers to all members, not just some. If a member Director or one of his employees, in fact, does receive such income, there is no reason why he should be treated differently than the members.

Section 124.94(b) defines the term "significant portion of his income" to mean "20 percent of gross personal income" and 50 percent of such income if the member is over 60 years old and receiving this income through retirement, etc.

We think the distinction between types of income has no sound basis in the statute. The only leeway given EPA is in the term "significant income." If a member's income is, in fact, "significant" the type of income is irrelevent, as shown by the statutory use of the phrase "directly or indirectly," and he may not serve on the board.

Furthermore, we think the proposed guidelines, by specifying that the statutory phrase "significant portion of his income" means at least "20 percent" of the member's gross income, substantially undercut the Congressional purpose of preventing conflicts-of-interest.

We note that the Internal Revenue Service, in determining what is "substantial" lobbying activity by a tax exempt organization which may affect its tax-exempt status, generally considers 5 percent of such activity as marking the line between the permissible and the impermissible.

We point out that EPA has not attempted to define the term "indirectly." Yet this may be the most difficult in light of a New York Times article of December 3, 1972, which notes that some States are considering appointing as members of these boards, etc., representatives of the Chamber of Commerce and trade associations which rely on permit holders, etc., for income.

13. Disposal of Pollutants into Wells - Section 124.80 of the proposed guidelines requires that a State have "procedures" which prohibit or control the disposal of pollutants into wells. We think this provision is too vague. It provides no guidelines to the State as to when such disposals shall be prohibited altogether or merely controlled. We note that an even skimpier provision on well disposal is included in section 125.26 of EPA's proposed regulations. The Justice Department's complaint of April 27, 1971, in the Armco case, set forth EPA's policy on such disposals. It is quoted in our hearings of October 21, 1971, entitled "Mercury Pollution & Enforcement of the Refuse Act of 1899" (Part 2), p. 1092, as follows:

> "To oppose subsurface disposal of waste in general because of the effects of underground pollution and the fate of injection materials are uncertain with today's knowledge. These wastes could well result in serious pollution damage and require a more complex and costly solution on a long-term basis."

We think that policy is sound today and should be followed at least until meaningful controls can be devised and published for public comment. We request that the proposed guidelines and regulations be revised in accordance with EPA's 1971 policy.

14. Navigable Waters - Section 124.1(n) of the proposed guidelines adopts by reference the definition of "navigable waters" in section 502(7) of the Act which defines that term as "the waters of the United States, including the territorial seas." Section 125.1(m) of EPA's proposed regulations of November 27 merely repeats that definition.

In a November 22, 1972 letter to us EPA's Deputy General Counsel said that "for the purpose of making initial administrative determinations, we are of the view that at least the following are waters of the United States: (1) All navigable waters of the United States; (2) Tributaries of navigable waters of the United States; (3) Interstate waters; (4) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; (5) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and (6) Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce."

We agree with these "initial administrative determinations." We also think they should be included in the proposed guidelines and regulations so that the public will be fully informed about them.

THE PROPOSED EPA REGULATIONS OF NOVEMBER 27, 1972

The following comments relate to EPA's proposed regulations of November 27, 1972, concerning issuance of permits by EPA. Since we are still reviewing them, we may have additional comments, which we shall forward to you as early as possible.

A. Section 125.4(c) of the proposed regulations (p. 8) states that the NPDES "does not apply to" discharges from "properly functioning marine engines." In support of this statement, EPA cites some remarks made by Congressman Jones on October 10, 1972, (Cong. Rec. (daily issue) p. E84521) -- six days after the conference report was adopted by the Congress.

The matter of oil discharges from properly functioning marine engines is already covered by section 311 of the Act which, like its predecessor (section 11 as amended in 1970), applies to all discharges of oil determined to be "harmful." EPA's regulations of September 11, 1970 (35 F.R. 14306) determined that discharges of oil "from a properly functioning vessel engine" are not harmful. Hence, the exemption of such discharges is by virtue of section 311 and the 1970 regulation and need not be rested upon the above mentioned remarks of Congressman Jones. However, if the regulation cites his remarks, for purposes of illustrating the scope of the exemption, we think it should extend the quote of Congressman Jones' remarks of October 10, 1972, to include that part underlined below. They are as follows:

> "*** we would not expect the Administrator to require permits to be obtained for any discharges from properly functioning marine engines or to institute any prosecution for failure to obtain such a permit. This does not, of course, preclude the Administrator from taking action against the discharges from marine engines of harmful quantities of oil under section 311 of the act." (Emphasis supplied.)

B. Section 125.35(c) of the proposed EPA regulations of November 27, 1972, states that "when the national security requires" the Administrator "may withhold any information from the public." Under this provision, discharge data of a defense contractor probably could be withheld from the public under the guise of national security.

There is no basis in the statute for this provision. Section 308 specifically requires that all information shall be available to the public. Congress spelled out only one exception to this very broad requirement. Even then, Congress specified that the exception would not apply to effluent data.

The above provision creates a new and unauthorized exception and extends it to effluent data.

We request that section 125.35(c) be deleted from the proposed regulation.

C. Section 125.5(b) of the proposed regulations delegates to EPA's Regional Administrators the authority under section 308(b) to determine whether or not certain data shall be considered "confidential." Section 125.35 then states that the Regional Administrator "or his authorized representative" can make this determination.

We think this determination should not be delegated, particularly without some guidelines to the regions on how it shall be exercised. The objective of the provision is to make all data, etc., public. Thus, when confidentiality is allowed, it should be done sparingly and with uniformity. We think that the requests for confidentiality should be few and could easily be handled by EPA headquarters.

D. Section 125.12(h) of the proposed regulations provides that fees collected "shall be used to help defray the cost of administering this program."

We have been unable to find any provision in the Act that authorizes EPA to supplement its appropriations through use of these fees. Absent such a provision, it is our understanding that they must be treated as miscellaneous receipts.

E. Section 402(b)(6) of the Act provides that no permit "will be issued" if the Corps decides that anchorage and navigation "would be substantially impaired."

Section 125.14(b) of the proposed regulations allows the Corps 30 days to evaluate the impact of the discharge on anchorage and navigation, and states that if Corps fails to answer within this period it will be "deemed to be a finding that anchorage and navigation will not be substantially impaired by granting" of the permit, and that the Corps will be allowed more time "where it appears that the public interest warrants such extension."

This provision is inappropriate. Congress has already determined that it is in the public interest to protect anchorage and navigation. The statute requires a "judgment" by the Corps in "consultation" with the Coast Guard. The mere lapse of time should not and cannot be construed by EPA as meeting the statutory requirement. If the Corps is not moving quickly enough, EPA has the obligation to press the Corps for a response. But EPA cannot impose on the Corps a "silence-means-concurrence" rule.

F. Section 125.26(b)(1)(B) of the proposed regulations provides, in the case of discharges from publicly owned treatment works, that the permittee must give notice to EPA of any "new introduction of pollutants which exceed 10,000 gallons on any one day into such treatment works from a source" subject to section 301 if that source "were discharging pollutants." A similar provision in section 124.45(d)(2) of the proposed guidelines does not contain the reference to a discharge exceeding "10,000 gallons" a day.

Both provisions stem from section 402(b)(8)(B) of the law. There is, however, no basis in the statute for excluding from the notice provision the new introduction of pollutants that amount to 10,000 or less gallons in any one day. Moreover, as written, five sources could each introduce into these works pollutants totalling for each, 9,999 gallons a day and no notice would be required for any of them. The regulation should be revised to conform to the statute.

G. Section 125.14(f) of the proposed regulation states:

> "(f) Whenever the provisions of the Fish and Wildlife Coordination Act...apply, Regional Administrators shall consult with appropriate officials of the U.S. Department of the Interior and the U.S. Department of Commerce, and with the head of the agency exercising administration over the wildlife resources of the State in which the discharge will occur."

Since the proposed regulation applies to EPA-issued permits, the foregoing provision implies that the Coordination Act may not apply to some EPA issued permits under section 402 of the Act. You will recall that the House version of this law (H.R. 11896) would have exempted the section 402 permit program from the requirements of the Coordination Act. That exemption was striken from that bill by Congressman Wright who said (Cong. Rec. (daily issue) Mar. 29, 1972, p. H2735):

> "Mr. Wright. Mr. Chairman, this, too, is a corrective amendment which I understand has been cleared on both sides of the aisle. It would make the Fish and Wildlife Act applicable in every respect that it applies by its own terms to all sections of the bill. There was an inadvertence by which this particular section was put in the bill that renders the Fish and Wildlife Act inapplicable in certain instances. This was not the intention of the committee to do this."

We request that the proposed regulations be amended to make it clear the requirements of the Fish and Wildlife Coordination Act apply to all EPA issued permits.

In this connection, we call your attention to the comments of the House Committee on Government Operations in its report (H. Rept. 92-1401, Sept. 18, 1972) entitled "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca" (copy enclosed). The Committee said (p. 19):

> "The committee commends the Corps for amending its procedure to make it consistent with the Fish and Wildlife Coordination Act which places a duty on the Corps to "consult" with the Fish and Wildlife Service. The mere issuance of a general public notice certainly is not sufficient to meet this statutory obligation. To comply with the law, the Corps has an obligation to seek the Service's formal comments on each permit application or determine that the Service has none to make."

These comments apply with equal force to section 402 permits.

As to any recommendation mentioned above that you do not adopt, please set forth to us your reasons for not doing so.

Thank you for your attention to this matter.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

JOHN D. DINGELL
Chairman
Fisheries and Wildlife Conservation
Subcommittee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 9 1973 FEB 12 RECD

THE ADMINISTRATOR

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your letter dated December 11, 1972, in which you make recommendations for revisions of the proposed Guidelines for State Permit Programs (37 F.R. 24088) and, as to any recommendation not adopted, ask us to set forth our reasons for not adopting such recommendation. As you know, the final Guidelines were promulgated December 18, 1972, and published in the December 22, 1972, Federal Register (37 F.R. 28390). The following are those recommendations which were adopted or substantially adopted in the final Guidelines (numbers and titles correspond to those used in the recommendations):

3. Public notice. Section 124.33(b) was added to the final Guidelines to require participating States to set up a mailing list for fact sheets. Any State fish and game agencies and regional offices of the National Oceanic and Atmospheric Administration (NOAA) and the Bureau of Sport Fisheries and Wildlife can arrange to receive copies of public notice and fact sheets by asking to be added to the mailing list pursuant to sections 124.32(a)(3) and 124.33(b).

7. Schedules of compliance. In place of notice of individual schedule violations, section 124.44(d) requires the State to prepare quarterly reports of schedule violations. Each report is to be available to the public for inspection and copying. Interested citizens can determine the status of schedule compliance within the State more easily by consulting the reports than by collecting individual public notices of default. In addition, during the term of the permit, monitoring data submitted by the permittee on National Pollutant Discharge Elimination System (NPDES) reporting forms will indicate whether any permit effluent limitations are being violated. All such reporting forms will be available to the public for inspection and copying.

12. Agency Board Membership. Section 124.94(a) of the Guidelines was changed to clarify that the term "board or body" includes any individual, including the Director, who has or shares authority to approve permit applications either in the first instance or on appeal. Section 124.94(b) revised the determination of "significant portion of his income" from 20% to 10%. Section 124.94(e) (relating to income from diversified investments such as mutual funds) is the only interpretation of the term "indirectly." As you point out, any attempt to define "indirectly" generally would be difficult if not impossible. Each case raising the issue of indirectness will have to be decided on the basis of the fact situation presented.

13. Disposal of Pollutants into Wells. The Environmental Protection Agency's 1971 subsurface disposal policy is presently undergoing review and revision in accordance with advances in well disposal technology. Under section 124.80(d) EPA will distribute its revised, up-dated subsurface disposal policy to the regions and to the States. The regions will utilize that policy and related technical information in their review of State programs and State permits for well disposals. In addition, a new subsection 124.80(c) makes clear that well permits are subject to the same requirements as all other NPDES permits.

The following recommendations are sound and we agree with them but did not "adopt" them in the final Guidelines because (1) we felt the Guidelines already adequately provided for the recommendation, or (2) we felt the recommendation was best implemented through means other than the Guidelines:

1. Approval of State Program. EPA procedures for approval of State programs are outside the scope of guidelines specifying the elements of those programs. We do intend, however, to provide full opportunity for public participation in the approval of State programs. We will make copies of each State program submission available to the public for inspection and copying. We expect to hold public hearings on State program submissions prior to the making of a final determination. Public comments and suggestions will be solicited throughout the approval process. We will make public our policies and procedures with respect to State program approvals prior to approving any such programs under section 402 of the Act.

4. Fact Sheets. The qualifying phrase in the Guidelines with respect to thermal discharges in fact sheets will be added to the EPA regulations which were proposed in the Federal Register on January 11, 1973. The qualifying phrase was added in response to State comments that thermal information in fact sheets was pointless unless the thermal component

of the discharge was subject to limitation by reason of the various provisions of the Act (such as section 301, which includes limitations based upon water quality standards, and sections 302, 306, 307, and 403). We expect that if an industry such as Potlatch Forest, Incorporated, of Lewiston, Idaho, discharges an effluent with temperatures 10-30° above ambient, the effluent would be subject to limitation under sections 301(b)(1)(A) and 301(b)(1)(C) of the Act. Idaho would then be required to provide the thermal information required by section 124.33(b)(2) of the Guidelines in the fact sheet.

The Guidelines require the States to cite in fact sheets all applicable standards and limitations. A required listing of source studies and documents would be an additional cost and burden to the States. Few permits are likely to be based directly on such studies as the permittee could challenge any permit limitations not required by the guidelines and requirements of the Act.

6. Adequate State Authority. We agree that compliance with the section 304(h)(2) Guidelines alone does not insure that a State has also met the requirements of section 402(b) of the Act. Prior to approving a State program we fully expect the State to have "adequate authority" for the items listed in section 402(b). The requirements for permit conditions in section 124.45 of the Guidelines are in addition to the authority requirements of section 402(b).

8. EPA Review of permits. As part of the procedures for the approval of State programs, all agreements between EPA Regional Administrators and the States required under sections 124.22, 124.23, 124.45, and 124.47 of the Guidelines shall be reduced to writing and available to the public for inspection and copying prior to approval of a State program. The Regional Administrators have not been formally delegated the authority to waive review of permits. No such delegation will be made until the Agency formulates its policy with respect to waivers. We will encourage public participation in the formulation of that policy.

10. Duration and Reissuance of a Permit. The comment accompanying section 124.51 of the Guidelines makes the point that the permit term need not be dictated by the permit schedule of compliance. Many permittees will receive a long term permit with a short term compliance schedule. No permittee will be given a permit inconsistent with the dates and requirements of section 301(b). See sections 124.42(a) and 124.44(a) of the Guidelines.

We agree that, except where unnecessary or duplicative, review of an application for reissuance of a permit should be conducted in the same manner as was review of the original application. Section 124.52(c) in the final guidelines makes clear that all notice and public participation

procedures shall be repeated. Abbreviated procedures are allowed by section 124.82(a) only to the extent that the State has up-to-date information from monitoring reports and other sources so that, e.g., there would be no need for submission of another application form.

14. Navigable Waters. We agree that the public should be fully informed of our current interpretation of the term "navigable waters." The Guidelines, however, are not an appropriate vehicle for the dissemination of a legal opinion which is subject to revision and challenge.

The following are those recommendations which we did not adopt for the reasons given below:

2. Tentative Determinations. By the time a draft permit, public notice, and fact sheet have been prepared pursuant to sections 124.31, 124.32, and 124.33 of the Guidelines, all alternatives to the proposed discharge should have been considered and either adopted or rejected. There could be no draft permit if decisions had not been made on alternatives. The purpose of the fact sheet is to allow the reader to determine whether the standards and guidelines required by section 402 were properly applied in the formulation of tentative determinations. An additional discussion of alternatives not required by section 402 could involve considerable expense and effort on the part of many State agencies. Any person who feels that the alternative presented by the tentative determinations is improper or unlawful can request a hearing pursuant to section 124.36.

3. Public Access to Information. Section 402(b)(2) of the Act lists two alternative requirements with respect to section 308. The State must have authority either (1) to issue permits which insure compliance with "all applicable requirements of section 308," or (2) to inspect, monitor, enter, and require reports to at least the same extent as required in section 308. The second alternative appears to be limited by its description to section 308(a) (relating to recording, reporting, inspection, and entry) and does not include section 308(b) (relating to confidentiality and public disclosure of information obtained pursuant to section 308(a)). Section 124.45(c), Subpart G, and section 124.73(d) of the Guidelines implement the second alternative in its entirety. Section 124.35 then expands upon the section 402(b)(2) authority by requiring public availability of all NPDES information and comments without the restriction that such availability be implemented through conditions in issued permits (as is the case in the first alternative in section 402(b)(2)). Section 124.35 as written is also consistent with section 402(j) of the Act which requires only permit applications and issued permits to be available to the public for inspection and copying.

9. Environmental Impact Statements. Given the ambiguities you point out as to the proper implementation of the National Environmental Policy Act (NEPA) with regard to State-issued permits and the threshold question whether such permits are even subject to NEPA for lack of a "major Federal action," it seems improper to subject State programs to NEPA requirements at this time. If it is determined that the States by issuing new source permits or that EPA by reviewing State permits for new sources is responsible for complying with the requirements of NEPA, EPA can so provide in later regulations. There is no urgency as the definition of "new source" is limited to sources the construction of which commences after the publication - up to one year and 90 days after enactment - of proposed standards of performance.

11. Monitoring. States have discretion to specify monitoring requirements only with respect to "minor discharges," those involving less than 50,000 gallons per day. All other discharges must be monitored in accordance with the requirements of section 124.61(b) of the Guidelines. The States, in exercising their discretion, can avoid burdening thousands of small, insignificant dischargers with requirements that yield minimal benefits.

Retention of monitoring records beyond three years is not required because EPA is unlikely to be interested in records more than three years old, especially in the absence of litigation. Monitoring reports submitted over the term of the permit will have indicated any violations, absent willful falsification by the permittee. When the permit is up for renewal the emphasis will be upon present compliance rather than violations which may have occurred more than three years in the past.

As you point out, any State law which precludes the State from divulging effluent data or other information which section 124.35 requires be available to the public must be amended or repealed if the State is to obtain approval of its permit program. Another device to preserve public access to NPDES information is the procedure by which the EPA General Counsel can overrule State confidentiality determinations with respect to information contained in NPDES forms. See section 124.35(b) of the Guidelines.

We are giving your comments on EPA's regulations of November 27, 1972, which were proposed in the Federal Register on January 11, 1973, careful consideration. After those regulations are published in final form we will be happy to comment upon any of your recommendations if not finally adopted.

If you would like further elaboration of any of the points discussed in this letter, we would be happy to meet with you, other members of the Subcommittee, your staff, or any other persons you care to have present. We are also sending copies of this letter to Congressmen Dingell and Vander Jagt.

Sincerely yours,

/s/ Bill

William D. Ruckelshaus
Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 16 1973

FEB - 5 RECD

THE ADMINISTRATOR

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of January 11, 1973, which raises some questions regarding the Environmental Protection Agency's implementation of the Section 402 national permit program. This same response is being sent to Congressmen Vander Jagt and Dingell.

Initially, as you are no doubt aware, I would like to point out that the proposed regulations governing EPA permit activities were published in the Federal Register on January 11, 1973. I am enclosing several copies of these proposed regulations for your information. These proposed regulations set forth procedures for public notices, public hearings, and other matters regarding permit processing and issuance.

You have raised questions regarding procedures which EPA and the States will follow in cases where States have received interim authorization to process and issue discharge permits, and are primarily concerned with the approach indicated in a memorandum which was sent to EPA's Regional Administrators on December 27, 1972.

The underlying thrust of the December 27 memorandum was to emphasize the urgency of establishing the necessary procedural framework for processing and issuing permits. This, of course, entails working closely with States which have received interim authority to issue permits during the next 45 days. After many months of preparation, we now have the opportunity to work with the States to demonstrate our ability to make the new national permit program effective. We believe it is of utmost importance that this process begin with the issuance of public notices and the convening of public hearings as to those permits which may be issued in the initial stage of the national program.

In our response to your January 4, 1973 letter, it was pointed out that during the period of interim authority each State will have the primary responsibility for compliance with the public participation

requirements of Section 101(e). We have indicated to these States, however, that EPA will not approve the issuance of any permit during this period except after public notice and opportunity for public hearing. We have further required that public hearings be held in every State proposing to issue permits, as a matter of course on the applications currently being processed. In the response to your January 4 letter, we noted some hearing dates which have already been set in seven States which have interim authority. It is expected that other hearings will be scheduled in the near future. We believe this approach does insure effective public participation during the interim period when some States will be issuing permits.

In response to your specific examples of "undue speed" in implementing the permit authority, the following comments relate to each of the three points you raise:

First: The Act does not provide any specific procedural guidance for the issuance of permits by States during the interim period. It is clear, however, that any procedural prerequisites should be consonant with the underlying intent of the Act regarding public participation. Both the guidelines for State programs published by EPA pursuant to Section 304(h)(2) and the requirement in Section 402(b) that the State have authority to insure that the public "receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application" apply to a State program submitted for final approval under Section 402(b). We believe the policy indicated above of requiring States during the interim period to issue public notices and hold public hearings is consonant with the intent of the Act and the procedure which will apply following final approval.

Second: In States which have not requested or received interim authority, there is a parallel need to begin processing and issuing permits. We believe this can and should be done on a limited basis, even though our regulations governing EPA permit issuing activities are not yet promulgated. As noted above, they have been published for comment, and it is expected they will be promulgated in mid-February. Since these regulations are not required by the Act, however, we feel that we can now proceed to process permits using those procedures which we expect to promulgate in the near future. Moreover, we believe that our policy to require public notices and public hearings on the initial permits to be issued is consistent with the public participation requirement in the Act, even though guidelines under Section 101(e) have not yet been promulgated.

Third: All permits to be issued by the States having interim authority or by EPA in the near future will contain specific effluent limitations, timetables for compliance, and monitoring requirements. The effluent limitations will be based on our best assessment of "best practicable control technology currently available," even though effluent

guidelines under Section 304 have not yet been promulgated. In addition, a sizeable number of the permits proposed to be issued in the near future will contain requirements based on water quality standards which are more stringent than best practicable control technology. In both cases, such permits will be issued only where sufficient data is available and reasonable confidence exists in the work we have done to date to establish effluent guidance for various industrial categories. Accordingly, our expectation is that the conditions and limitations contained in these permits will not be materially different from conditions and limitations based upon effluent guidelines to be promulgated in the future. For that reason, we believe such permits should not be subject to change based on subsequently promulgated effluent guidelines and should not be terminated or modified except as provided in Section 402(b)(1)(C) of the Act. We believe it is imperative that the limitations and conditions set forth in permits be firm requirements and not constitute a "moving target". There will be, no doubt, some cases in which the permit should specifically provide for subsequent modification based upon the final effluent guidelines. We expect these cases to be few.

We will be glad to provide you with copies of the reports submitted to us by the Regions indicating the changes which may be required in State laws in order to eliminate conflicts of interest by members of State boards.

Sincerely yours,

Bill

William D. Ruckelshaus
Administrator

Enclosure

HENRY S. REUSS, WIS., CHAIRMAN
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DANTE B. FASCELL, FLA.
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225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

January 4, 1973

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

I.

In our letter of December 11, 1972 to you, Congressman Vander Jagt, Congressman Dingell and I commented on (a) EPA's November 11, 1972 proposed State permit guidelines (37 F.R. 24088), and (b) EPA's unpublished permit regulations which you approved on November 27, 1972 and which presumably are now pending at the Office of Management and Budget.

On December 22, 1972, EPA promulgated its final version of the State permit guidelines (37 F.R. 28390). This version includes several, but not all, of the changes we recommended. On the last page of our letter, we said:

> "As to any recommendations mentioned above that you do not adopt, please set forth your reasons for not doing so."

1. We would appreciate receiving these promptly.

II.

Section 402(b) of Public Law 92-500 requires that a State which desires to administer "its own permit program" must "submit a statement" from its Attorney General that "the laws of such State...provide adequate authority to carry out" the permit program. EPA must approve the program "unless" the Administrator "determines that adequate authority does not exist" to insure compliance with nine specific statutory requirements for the program.

EPA's December 22 guidelines on State permits has added Sections 124.3 and 124.4.

The new Section 124.3 provides that the "authorities cited by the State attorney general," in compliance with Section 402(b), must (1) be in the form of "lawfully promulgated State statutes and regulations," and (2) be in force on the date of the Attorney General's statement.

Paragraph (a) of the new Section 124.4 provides that all "procedures" for the program must also "be set forth in State statutes or lawfully promulgated State regulations." At this point, the guidelines appear to make a vague distinction between procedural and non-procedural regulations. They do not define the term "procedural" regulations or give any indication to the States or the public as to what EPA will or will not consider to be "procedural" regulations.

Paragraph (b) of Section 124.4 authorizes the State to promulgate these "procedural" regulations "subsequent to the time" the State permit program is submitted to EPA for approval if the State (1) has "statutory" authority to "establish and administer" such procedures, (2) has given EPA a full description of the procedures, and (3) has made a "written commitment" to promulgate them by "January 1, 1974." The guidelines fail to state whether or not the State's permit program application can be approved and whether or not the State can begin to process permit applications pending promulgation of such regulations.

We believe that EPA lacks authority (1) to make the foregoing distinction between so-called procedural regulations and non-procedural regulations of a State, and (2) to allow the State to conduct a State permit program, including issuance of permits under Section 402(b) of the Act, prior to the time its procedural regulations are adopted by the State and approved by EPA. Moreover, the law does not authorize or contemplate a contingent type of approval conditioned upon future establishment of authority.

As noted above, a State, to receive approval of its program, must submit to EPA "a full and complete description" of it, together with the Attorney General's statement that "adequate authority" exists to carry it out. Section 402(b) makes no distinction between substantive and procedural authority. Indeed, most, if not all, of the nine specific statutory requirements of Section 402(b) could not be fully implemented unless and until adequate procedures are established by statute or regulation.

State, as well as Federal, statutory authority is often expressed in general terms. A State legislature, like Congress, generally gives its administrators power to fill in the details by regulation. But until this is done, it will often be impossible to determine whether or not the authority is, in fact, "adequate." In short, the so-called procedural regulations are the "guts" of the State's program. If they are inadequate, the State's "authority" is inadequate and EPA cannot approve the State program.

Moreover, there is no justification for EPA taking this piecemeal approach to the permit program. EPA need not, and should not, establish short cuts which undermine the statute so that States can qualify for administration of the program. Once approval is granted, it will be difficult for EPA to terminate that approval. A "go slow" approach is not only prudent, but warranted. Such an approach will not result in any lost time, because, in the interim, EPA can and should issue permits under the Act.

2. We request that the December 22 guidelines be promptly amended by deleting Section 124.4.

III.

3. Please provide to us a copy of all the comments received by EPA on the proposed guidelines of November 11, 1972.

IV.

4. Please advise us when EPA will publish for public comment its regulations to govern EPA permits which you approved on November 27, 1972.

V.

On December 19, 1972, EPA announced that ten States were "granted interim authority" under Section 402(a)(5) of the Act to issue permits. According to EPA's press release, each State "has to meet six requirements." The release fails to indicate what procedures will be followed by EPA to insure that each permit "shall be subject to such conditions as the Administrator determines are necessary" under the Act, and to insure that no permit "shall issue if the Administrator objects to such issuance." It also fails to state what steps the States will take to insure, in this interim period, compliance with Section 101(e) of Public Law 92-500, which directs that there be public participation in the development, revision and enforcement of any regulation, standard, effluent limitation, plan or program established by EPA or any State under that Act.

5. (a) Please indicate to us what those procedures are.

(b) Please state how each of the 10 States will comply with Section 101(e).

(c) During this interim period, please ask your regional offices responsible for these ten States to provide to us, prior to issuance, a copy of each proposed permit, together with a statement indicating (i) when the permit is scheduled to be issued and (ii) the extent of public participation with regard thereto.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 8 1973

THE ADMINISTRATOR

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

FEB 9 RECD

Dear Mr. Chairman:

This is in response to your letter dated January 4, 1973. The numbers used below correspond to the numbers in your letter.

1. State guidelines. Our reply to the recommendations in the letter dated December 11, 1972, signed by Congressman Vander Jagt, Congressman Dingell, and you is being completed and should reach you shortly.

2. State regulations. Your request that we delete section 124.4 from the Guidelines seems to be based upon an assumption that section 124.4 undercuts section 402(b) of the Act. We do not believe that is the case. Section 124.3 of the Guidelines clearly requires that all authorities which the State must have pursuant to section 402(b) be in full force and effect at the time the State attorney general certifies that the State has "adequate authority" under section 402(b). Section 124.3 also provides that such authorities shall be in the form of lawfully promulgated State statutes and regulations. Section 124.4 then imposes an additional requirement that all procedures which the State must establish to conform to the requirements of the Guidelines also shall be set forth in State statutes or lawfully promulgated regulations, except where the State may otherwise have authority to establish such procedures it may submit a full and complete description of the procedures to be used in administering the program, accompanied by a commitment to promulgate necessary regulations by January 1, 1974. The distinction made in sections 124.3 and 124.4 is based upon section 402(c) of the Act. Under section 402(c), the Administrator must suspend the issuance of permits unless he determines that a State permit program (1) does not meet the requirements of section 402(b) (Cf. section 124.3 of the Guidelines), and (2) does not conform to the guidelines issued under section 304(h)(2) (Cf. section 124.4 of the Guidelines).

In the absence of section 124.4, some States might argue that "conformance" with the 304(h)(2) Guidelines will be satisfied by State promises

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to follow the Guidelines without the issuance of regulations for section 304(h)(2) program elements. Without such regulations citizens would not be able to sue a State agency in State courts for failure to follow the National Pollutant Discharge Elimination System procedures.

3. Comments on State Guidelines. We have received well over one hundred written comments on the State guidelines. The comments fill two large notebooks. Rather than send you copies of all this material, we invite you or members of your staff to visit our offices to inspect the comments. We would be happy at that time to run off copies of any comments you deem interesting or useful.

4. EPA NPDES regulations. We are pleased to enclose three copies of our regulations proposing policy and procedures for the Environmental Protection Agency's role in the National Pollutant Discharge Elimination System (NPDES). These regulations were proposed in the Federal Register on January 11, 1973, for a 30-day comment period. We are also enclosing for your information and comment our proposed standard municipal and industrial application forms.

5. Interim Permits. As of this date EPA has granted authority to issue NPDES permits to the following 15 States: Massachusetts in Region I; Virginia in Region III; Georgia and Mississippi in Region IV; Michigan, Ohio, Indiana, Wisconsin, and Minnesota in Region V; Iowa and Missouri in Region VII; American Samoa and California in Region IX; and Oregon and Washington in Region X. All interim authorizations have been made in accordance with the enclosed memorandum entitled "Section 402 Permit Program," the attached letter to State agencies, and the attached suggested format for requesting interim authorization. The memorandum was transmitted to EPA regional offices on November 10, 1972. The letter to State agencies was forwarded by the regions shortly thereafter. All States receiving interim authorization on December 19, 1972, and thereafter submitted the suggested authorization request format or language similar to it. The six requirements mentioned in the December 19, 1972 EPA press release are contained on page three of the letter to the State agencies.

During the interim period each State will be primarily responsible for compliance with section 101(e) of the Act in accordance with its present laws and procedures. No permit will be approved by EPA during this period, however, except after public notice by the State with opportunity for hearing and public comments. Public notices have been issued in a number of States and some public hearings already have been scheduled, including the following:

State	Hearing Date(s)	Number of Permits
Georgia	February 27	20
Indiana	February 22-23	6
Michigan	February 15	8

State	Hearing Date(s)	Number of Permits
Minnesota	February 13	6
Mississippi	February 22	10
Ohio	February 22	6
Wisconsin	February 21-22	6

With regard to your request for copies of proposed permits we have sent the enclosed memorandum entitled "Proposed Interim Permits" to the regional offices.

If you wish to discuss any of the matters discussed herein in further detail, please call me or Mr. Quarles at your convenience.

Sincerely yours,

William D. Ruckelshaus

Enclosures

HENRY S. REUSS, WIS., CHAIRMAN
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225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

February 9, 1973

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

I.

Our letter of December 11, 1972, to you reviewed your agency's proposed guidelines for the States' administration of the permit program under section 402 of the Federal Water Pollution Control Act (Public Law 92-500). Those Guidelines were promulgated on December 22, 1972 (37 F.R. 28390).

Our letter of December 11 also reviewed the November 27, 1972, draft of your proposed regulations to govern EPA permits under section 402. (See pages 10 through 13 of our December 11 letter, copy enclosed.)

We found numerous defects in both the guidelines and the regulations, and made various recommendations for correcting those defects.

The November 27, 1972, draft was published as proposed regulations on January 11, 1973 (38 F.R. 1362). Upon examining the proposed regulations we find that no changes were made in the November 27 draft to meet the objections our Subcommittees raised in our December 11, 1972 letter. Your letter of February 9, 1973, states that you are giving our comments "careful consideration."

We again request that you revise the proposed regulations, as we recommended last December, before they are finally promulgated.

II.

In addition, we believe that the proposed regulations should also be revised as follows:

A. Section 125.1(m) (Navigable Waters). This paragraph of the proposed regulations adopts the definition of "navigable waters" in section 502(7) of the Act, which defines that term as "the waters of the United States, including the territorial seas."

In his November 22, 1972, letter to us, EPA's Deputy General Counsel said that "for the purpose of making initial administrative determinations, we are of the view that at least the following are waters of the United States: (1) All navigable waters of the United States; (2) Tributaries of navigable waters of the United States; (3) Interstate waters; (4) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; (5) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and (6) Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce." This view was reiterated in Assistant Administrator Quarles' memorandum of February 6, 1973 to all EPA Regional Counsels (3 Env. Rep. 1240, issue of Feb 9, 1973).

We fully concur with his view. Because it gives precision to the content of the definition, we believe that the foregoing statement should be available to the public as part of the proposed regulations. We therefore again recommend that it be expressly incorporated in the proposed regulations. There is no better way to dissiminate EPA's interpretation of this term.

B. Section 125.11(a) (General Provisions). This paragraph states that all discharges of pollutants, without a permit, etc. "are unlawful and subject to the penalties provided by the Act." It also states that discharges "in violation of permit terms and conditions may result in the institution of proceedings under the Act." No similar statement is contained in your guidelines of December 22 for State permit programs, supra, although the law makes no distinction between permits issued by a State and those issued by EPA

We think the foregoing statement, with its express focus on the Federal Water Pollution Control Act, is erroneous because it fails to refer to the Refuse Act also. Section 402(a)(4) of Public Law 92-500 specifies that permits issued "under this title shall [also] be deemed to be permits issued under section 13 of the [Refuse] Act of March 3, 1899." The specific intent of Congress is made clear by the facts that (a) Congress specified, in section 511(b) of the Act, that discharges of pollutants subject to the Rivers and Harbors Act of 1910 and the Supervisory Harbors Act of 1888 "shall be regulated" solely by Public Law 92-500 and shall not be subject to the 1910 or 1888 Acts except as to effect on navigation and anchorage; and (b) Congress did not, expressly or by implication, provide a similar limitation on discharges of pollutants subject to the Refuse Act of March 3, 1899.

The proposed regulations should therefore recognize and inform the public:

(a) that a discharge of pollutants without a permit issued by EPA or a State under section 402 is also a violation of the Refuse Act of 1899 and is subject to the criminal penalties, and also the civil remedies, under the Refuse Act, as well as the penalties and remedies provided under the Federal Water Pollution Control Act;

(b) that discharges violating any permit condition in an EPA or State permit, or other violations of such permit conditions, "may result in the institution of proceedings under" the Refuse Act of 1899, or under the Federal Water Pollution Control Act, as amended, or both; and

(c) that a citizen who provides information leading to a conviction concerning such discharge is entitled to one-half any penalty imposed under the Refuse Act.

We request that you revise the proposed regulations accordingly.

C. Section 125.21 (Prohibitions). This section lists several instances where a permit shall not be issued. However, it fails to state that no permit shall issue in cases where the discharge contains any toxic pollutant or combination thereof for which a prohibition has been promulgated under section 307 of the Act.

We request that the proposed regulations be amended to include such a provision.

D. Conditions of permits - (1) It is disturbing to note that section 125.22 of the proposed regulations and section 124.45 of the State permit guidelines promulgated by EPA on December 22, 1972, supra, are not substantially alike.

For example:

(a) Section 125.22(a)(1) of the proposed regulations differs substantially from its parallel section 124.45(a) in the guidelines.

(i) The proposed regulations provide that if a facility expands, or production increases, or a process is modified, which results in new or increased discharges of pollutants, the permittee must report this by filing a new permit application. The State permit guidelines make the same requirement but also allow the permittee to merely give notice of such discharge if it "does not violate effluent limitations specified" in the permit. We see no reason for not including this alternative in the proposed regulations, provided it is made clear that EPA, not the permittee, determines whether or not the discharge complies with such limitations.

(ii) Both the State permit guidelines and the proposed regulations provide that the discharge of any pollutant "more frequently than or at a level in excess of" that authorized in the permit is a violation. But the proposed regulations also provide that the discharge of a pollutant "not identified or authorized by the permit" shall also be a violation. We think this provision should be in the guidelines also.

(b) The proposed regulations contain a section 125.22(a)(7). There is no corresponding section in the guidelines.

This section provides that the permittee must "agree in writing to comply with" the permit provisions within 30 days after issuance. Presumably, until the permittee agrees within this period to the permit, the permit will not be in effect. We think the regulation should make this clear.

Furthermore, the second sentence of the proposed regulations (sec. 125.22(a)(7)) states that such agreement "may" be subject to the "reservation of the permittee's rights under section 509 of the Act." (Section 509(b) gives any "interested person," including the applicant, the right to judicial review of EPA's "action" in several matters, including (F) "issuing or denying a permit under section 402" of the Act, but does not mention permits for disposal of sewage sludge under section 405 of the Act.)

Since the proposed regulations apply to permits under both section 402 and 405, the second sentence of the proposed regulations (which gives the section 405 applicant or permittee a right of judicial review not specifically provided for in section 509 of the law) is apparently broader than the statute. But even if EPA has authority to provide a right of judicial review for a section 405 permittee or applicant, why is such right restricted solely to the permittee or applicant and not accorded to other "interested persons" such as environmental groups?

Moreover, the word "may" in the second sentence of the proposed regulation creates an ambiguity. The sentence could be interpreted to (a) automatically preserve the right to judicial review by operation of the regulation, or (b) simply authorize the Government and the applicant to include in the agreement a provision specifically reserving such right of review, and in the absence of such a provision the right of judicial review is waived when the agreement is signed. We recommend that the ambiguity be resolved by rewriting the second sentence in order to adopt the second alternative, thereby according to EPA the flexibility, in appropriate cases, to make final agreements which settle the disputes between EPA and permit applicants, as follows:

> "Such agreement, if made with respect to a permit under section 402, may include a provision whereby the permittee reserves the right to judicial review provided under section 509(b) of the Act, and if the agreement does not include such provision the permittee shall be deemed to have waived such right to judicial review."

(c) The State permit guidelines contain a section 124.45(g) which requires revision of the permit to comply with more stringent standards or prohibitions subsequently developed on toxic effluents. There is no corresponding section in the proposed regulations. Why is it omitted?

The foregoing leads us to a more general recommendation: that you review the guidelines and the proposed regulations and make them conform to the maximum extent appropriate.

E. Section 125.34(b) (Initiation of Hearings). This paragraph specifies that a request for a hearing must state "with particularity any objections to the issuance of the proposed permit, and the issues of fact, law, or policy which are proposed to be considered..." It also states that "Regional Administrators shall deny any requests" for hearings "not meeting the requirements of this subsection." (Incidentally, the term "subsection" seems inappropriate since the regulations generally refer to "paragraphs," not "subsections.")

We think that this "bill of particulars" requirement is unduly restrictive. To insure that a regional administrator will not deny his request for a hearing, a citizen would probably have to hire lawyers to precisely spell out the "issues of fact, law, or policy." This could discourage many citizens which is undesirable. Section 124.36 of the State permit guidelines merely requires that the person petitioning for a hearing "shall indicate" his "interest" and the "reasons why a hearing is warranted." Surely, EPA should not require more in the case of permits it issues.

We request that section 125.34(b) of the proposed regulations be revised to eliminate these restrictive requirements.

F. Section 125.34(h) (Prehearing Conferences). This paragraph of the proposed regulations authorizes the Hearing Presiding Officer to determine whether and what "persons other than parties may be included in attendance" at prehearing conferences. This implies that such conferences will not be open to the public. The statute provides for public hearings. We think that this requirement should apply to all related proceedings such as a prehearing conference, particularly when such conferences will cover such substantive matters as "stipulations and admissions."

We request that this paragraph be revised to specify that such conferences are open to the public.

G. Section 125.34(j) (Initial Decision). This paragraph requires that an initial decision be issued "within 20 [calendar] days of the completion of the hearing."

We fully agree with EPA's desire to expedite these procedures. But we think this provision will encourage inadequate consideration of the hearing record and related matters. Indeed, several days of this 20 day period may be consumed simply in obtaining a transcript of the Hearing Record. Moreover, the regulation fails to indicate the consequences if the Presiding Officer does not meet this short deadline.

Even more importantly, this section allows only "10 days" after such decision for the filing of a request for a "hearing on appeal or for findings and opinion." This time limit appears quite unrealistic. Both the applicant and interested citizens will often need more time to review the record and the decision. Often citizens who cannot afford to buy the transcript will have to review EPA's copies.

We also call your attention to the Interior Department's experience under the Federal Coal Mine Health and Safety Act. Under its initial regulations of January 1971 (36 F.R. 799), Interior allowed 15 working days to file an appeal. On June 15, 1972, the Department changed the appeal period to 20 calendar days (37 F.R. 11861) and on November 22, 1972 proposed that the appeal period be increased to 30 calendar days (37 F.R. 24828).

We request that EPA revise this section (a) to provide the Presiding Officer with some flexibility in filing his initial decision later than within 20 days where more time is appropriate, and (b) to increase the period for filing an appeal from 10 to 30 days.

A similar revision is needed in section 125.34(n).

H. Section 125.34(i) (Initial Decision). This paragraph also provides that "any party" may request a "hearing on appeal" or "findings and opinion."

We have several problems with this section.

First. We note that at the initial hearing any person, in addition to a named party, may participate. Yet, under the regulation, only a "party" to the initial hearing can appeal. All too often the administrative process affords inadequate time for citizen groups to effectively challenge an application for a permit which may adversely affect the environment. Then, having been edged out at the initial hearing, they will, under this regulation, find themselves foreclosed from an administrative appeal. Yet, under section 509(b) of the Act, such a citizen can obtain judicial review whether or not he participated in the Administrative hearing. This paradox should be avoided by allowing any affected person to appeal.

Second. The regulations fail to indicate under what circumstances and why a person should request either (a) "hearing on appeal" or (b) "findings and opinion" and who at EPA decides which of these is most appropriate. Indeed, section 125.34(n) of the proposed regulations seems to indicate that these are, in reality, not alternative requests. That section states (a) that the "findings of fact and opinion shall become part of the record, and shall be made available to all parties participating in the hearing, or hearing on appeal" and (b) that any party in an initial hearing may request a hearing

on appeal "within 10 days following the issuance of the findings and opinion." Thus, it appears that under the proposed regulations anyone can request (a) an initial hearing, and (b) a findings and opinion, and then (c) a second hearing on appeal.

We believe that this section should be revised to indicate whether or not these are alternative appeal procedures, and if they are, under what circumstances EPA will grant the findings and opinion rather than a new hearing on appeal.

Third. We are concerned about the failure of the regulations to provide for an appeal to the Administrator. At both the regional level and the Washington headquarters level, the authority to decide is delegated to a "qualified person" designated as the "Presiding Officer" who is appointed, respectively, by the Regional Administrator and by the Administrator. The decision of the respective Presiding Officer constitutes "the final decision," respectively, at the Regional level, and at the headquarters level, and thus becomes the final decision of the agency. At no point in the process is there an opportunity for EPA's policy makers, such as the Regional Administrator or the Administrator, to review these decisions. Indeed, EPA's Administrator is clearly precluded from making such a review, even when the Presiding Officer has committed an error or has overruled the Regional Administrators' tentative decision to issue or deny the permit. The regulation specifies in each case that the Regional Administrator and the Administrator must act "according to the decision of the Presiding Officer." The only recourse is judicial review. We think this is plainly wrong.

The permit program is just getting off the ground. Many policy decisions have yet to be considered, let alone made. Indeed, it will be some months before effluent limitations and other requirements called for by the law will be finally promulgated. Thus, during at least the next year or two, decisions by the Presiding Officer will have a major role in determining the agency's policies without opportunity by the Agency's regular policy-making officials to set the basic criteria, policies, etc.

We are, of course, aware that this type of delegated decision-making is not uncommon. But we emphasize that, in most cases where it is employed by a Federal agency, considerable statutory or regulatory criteria or guidelines exist which neatly define the bounds of the delegated officials' discretion. That is not the case here. Few, if any, such criteria or guidelines exist today and will not exist for some time.

We think that in this early stage of the program the Administrator, at least, should not be precluded by regulation from reviewing in appropriate cases the decision of the Presiding Officer. Possibly, when the program is more stabilized and the permit program has more elements of routine to it, such a broad delegation will be desirable. But not at this early ground-breaking stage.

We request that you modify paragraph 125.34(j) as follows: (a) to allow anyone to appeal, (b) to clarify the provision for a "findings and opinion" and hearings on appeal; and (c) to revise the paragraph to enable the Administrator to revise or reject the Presiding Officer's decision.

I. Section 125.34(1)(5) (Conduct of Hearings on Appeal). This section allows the Presiding Officer to restrict cross-examination at the initial hearing and on appeal. We request that this section be deleted. Cross-examination is essential to insure an adequate record, and the Presiding Officer should allow cross-examination which is relevant to the inquiry.

J. Section 125.34(i)(6) (Conduct of Hearings). This section gives the Presiding Officer at the regional level unlimited discretion to hold an "appeal" type hearing, in which case everyone (even those who do not participate at the hearing) is then precluded from ever requesting an appeal from any decision resulting from that hearing. The only recourse is judicial review.

We request that section 125.34(i)(6) be deleted from the regulations.

K. Section 125.42 (Other Legal Action). This section states that the filing of a permit application "will not preclude legal action" under the Federal Water Pollution Control Act, as amended, except as provided in section 402(k) of that Act.

We request that this section be amended to state that such filing will not preclude a legal action under the Refuse Act of 1899, as well as the FWPC Act, except as provided in section 402(k) of the latter Act.

If EPA does not make any of the changes which we recommend in the proposed regulations, please explain why.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural
Resources Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural
Resources Subcommittee

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries
and Wildlife Conservation
Committee on Merchant
Marine and Fisheries

Encl.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 7 1973

THE ADMINISTRATOR

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

RECEIVED
JUN 7 1973
CONSERVATION AND NATURAL
RESOURCES SUBCOMMITTEE

Dear Mr. Chairman:

This is in response to your letter of February 9, 1973, and to those portions of your letter of December 11, 1972, that you referred to in your February 9, 1973 letter concerning implementation of the permit program mandated by section 402 of the Federal Water Pollution Control Act (the "Act"). The delay in responding is due to the fact that until recently discussions both inside and outside the Environmental Protection Agency were still being conducted concerning the contents of the procedural Regulations for the National Pollutant Discharge Elimination System (NPDES). These Regulations were published as final rulemaking on Tuesday May 22, 1973, in the Federal Register. Copies are enclosed for your reference.

I shall reply to your questions and comments in the order in which you proposed them.

Response to December 11 comments:

A. You objected to the inclusion of the remarks of Congressman Jones in §125.4(c) of the proposed Regulations and recommended that if we included the remarks we should extend the quote to include another sentence. Instead of expanding the quotation we have decided to delete all reference to Congressman Jones' remarks.

B. You objected to the provision of §125.35(c) of the proposed Regulations that "when the national security requires" the Administrator "may withhold any information from the public." You stated that you believed that under this provision discharge data of a defense contractor probably could be withheld from the public under the guise of national security. We understand your concern that this provision might provide a loophole for unwarranted withholding of information from the public. On the other hand we cannot believe that you would have the Environmental Protection Agency release data that would compromise the national security. We have however, attempted to tighten up that provision and the new subsection concerning national security reads:

d. Notwithstanding paragraphs (a) and (b) above, the Administrator may withhold any information from the public when the release of such information would violate Statutes or Executive Orders or Regulations issued pursuant thereto, concerned with the national security. See §125.35(d).

C. You objected to §125.5(b) of the proposed Regulations which delegated to the Regional Administrator the authority under section 308(b) of the Act to determine whether or not certain data shall be considered "confidential." You believed that this determination should not be delegated but that requests for confidentiality should be handled by EPA headquarters. We have modified the provision substantially in the final rulemaking. Section 125.5(b) now provides that the authority of section 308(b) is delegated to Regional Administrators only if the authority is exercised in conformance with §125.35 of the Regulations. Section 125.35 provides that in all cases where a request for information is received the decision on whether to release the information will be ultimately decided at headquarters in the Office of General Counsel.

D. You questioned our use of the statement that fees collected "shall be used to help defray the cost of administering this program." We have deleted the language from the final rulemaking.

E. You objected to the language of §125.14(b) of the proposed Regulations allowing the Corps of Engineers 30 days to evaluate the impact of the discharge on anchorage and navigation. You believed that this was imposing upon the Corps a "silence-means-concurrence" rule. This is not the case. EPA's Regulations were reviewed by the Corps of Engineers and the Corps concurred in these Regulations. EPA has not imposed upon the Corps of Engineers any such "silence-means-concurrence" rule, but has agreed with the Corps on a procedure for interagency coordination.

F. You objected to the requirement found in §125.26(b)(1)(B) of the proposed Regulations that in the case of discharges from publicly-owned treatment works the permittee must give notice to EPA of "any new introduction of pollutants which exceeds 10,000 gallons on any one day." You also objected that there was no similar provision in the proposed Guidelines for State Permit Programs. Your comments were provided on December 11, 1972. Subsequent to that, on December 22, 1972, EPA published the State Program Guidelines in final form. Section 124.45(d)(2) of those Guidelines allows the Director to exclude "categories and classes of point sources and discharges" from the requirement of reporting. That exclusion authority is much broader than the 10,000 gallon cutoff contained in §125.26(b)(1)(ii) of the final Regulations so there is no conflict

between the final Regulations and the final Guidelines. As to the question of whether a 10,000 gallon cutoff figure is appropriate, we believe it is. We believe that without a cutoff figure included, the offices of both EPA and the State Water Pollution Control agencies would be swamped with reports about such sources as candy stores, fruit stands, and individual homes. Should however, we determine that this provision is being abused we will give serious consideration to modifying it in the future.

G. You were concerned with the provisions of the Regulations concerning the Fish and Wildlife Coordination Act, specifically §125.14(f) of the proposed Regulations. You urged that we change the Regulations to provide full coordination with the fish and wildlife interests. Section 125.14(f) of the final Regulations concerns the roles of the Department of Interior and Department of Commerce in the review of permits. This subsection provides that the agencies may receive all applications for permits and that they will have a right to comment on all applications. They may also request that the Regional Administrator grant them additional time to comment on particular applications. Where the agencies advise the Regional Administrator that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish or wildlife resources the Regional Administrator may include in the permit those conditions so specified by the agency. Other provisions in the Regulations provide additional coordination with the fish and wildlife agencies. These agencies will receive all public notices. They will also receive,without further requesting, copies of all fact sheets. In addition, where they are affected, they may, if they so choose, become parties to any hearings held on permit matters. We believe that all these provisions provide adequate coordination with the fish and wildlife interests.

Response to February 9 comments:

A. You recommended that we expressly incorporate the definition of navigable waters that had been previously transmitted to you by EPA's Deputy General Counsel. We agree with this position and have greatly expanded the definition of navigable waters appearing in the Regulations. See §125.1(o).

B. You were concerned that we had not referred to the Refuse Act but were focusing entirely on the Federal Water Pollution Control Act. We have modified the proposed Regulations to refer specifically to the Refuse Act in the final Regulations. See §125.42.

C. You were concerned that the prohibition section of the proposed Regulations failed to state that no permit shall be issued where the discharge contained toxic material for which a prohibition had been

promulgated under section 307 of the Act. Section 125.22 of the final rulemaking provides that if a toxic standard or prohibition is established under section 307(a) of the Act then the Regional Administrator must revise the permit in accordance with the toxic effluent standard or prohibition, where such toxic standard or prohibition is more stringent than any limitation in the permit.

D. You were concerned that several sections of the proposed Regulations and the State Guidelines were not substantially alike. We believe that we have modified the proposed Regulations to conform substantially to the State Guidelines as follows:

(a)i. The final Regulations now provide that where the discharge is increased but "does not violate effluent limitations specified in the permit," notice is sufficient. See §125.22(a)(1) and §124.45(a).

ii. You noted that the Guidelines did not contain the phrase "not identified or authorized by the permit" whereas the Regulations did. We have deleted the phrase from the Regulations and they now conform to the Guidelines. See §125.22(a)(1) and §124.45(a).

(b) You noted §125.22(a)(7) of the proposed Regulations contained the requirement that the permittee must "agree in writing to comply with" the permit, whereas this was not included in the State Guidelines. We have deleted the requirement from the Regulations. Applicants will not be required to agree in writing to comply with the conditions of the permit and with the Act.

(c) You commented that the State Guidelines contain §124.45(g) requiring revision of a permit to comply with more stringent toxic standards and noted that it was not included in the proposed Regulations. It is found in the final Regulations at §125.22(a)(6).

E. You were concerned about the initiation of hearings and that some of the requirements to initiate a hearing may be too stringent. The final Regulations provide for two types of hearings: a public hearing which the Regional Administrator may call at any time that he determines that there is a significant degree of public interest and adjudicatory-type hearings which are by necessity more formal. We have tried in this procedure to strike a balance between the rights of the public to participate in hearings and the due process rights of persons who may have interests that would be affected by the issuance or denial of a permit. In most cases public hearings will precede adjudicatory hearings and many citizens, without utilizing lawyers, will have an opportunity to participate in these public hearings. Where adjudicatory hearings are held a citizen or an industry requesting to participate should be prepared to precisely articulate the interest that would be affected by the issuance or nonissuance of the permit and also to state with particularity the reasons for the request and the issues proposed to be considered at the hearing. See §125.34(c)(2).

F. You were concerned that prehearing conferences would not be open to the general public. The final Regulations do not modify the provision that generally the prehearing conferences are not open to the general public. We believe that to conduct orderly hearings these prehearing conferences will usually have to be held. To have these prehearing conferences open to the general public could result in little or nothing being accomplished because of the questions and comments being generated by the public and the need for larger quarters. We have however, provided that the presiding officer has the discretion to allow persons other than parties to attend. Should we find that this discretion is being abused we will consider amending the Regulations. In the meantime, however, we believe that in order to maintain the orderliness and the speed of these prehearing conferences they should be generally limited to the parties and should exclude the general public. See §125.34(k).

G. You were concerned that EPA was imposing upon itself too tight a time frame for generating decisions following hearings. We have modified somewhat the time periods in the decision process. See 125.34(o). However these times are still rather tight. We believe these are necessary in order to expedite the process and still allow people their rights. If after we have some experience with the program we determine that the times are inappropriate we will consider modifying the Regulations.

H. First. You believe we should permit any affected person to appeal notwithstanding the fact that he was not a party to the hearing. You believed this was necessary because section 509(b) of the Act allowed any citizen to obtain judicial review whether or not he participated in the administrative hearing. We believe that review under section 509(b) of the Act is limited to those people who participated in the administrative process. Therefore we do not believe that we are faced with the paradox you suggest and have retained the procedure limiting appeal rights to those parties who participated in adjudicatory hearings.

Second. You had several questions on the procedures as to whether people should request findings and an opinion or hearings on appeal or second hearings on appeal and suggested that the section be revised. We have completely revised §125.34 and believe that the problems have been eliminated.

Third. You were concerned that the Regulations failed to provide for an appeal to the Administrator. The Hearings and Appeals section has been revised substantially and now provides for an appeal to the Administrator. See §125.34(p).

I. You suggested that the presiding officer should allow cross-examination which is relevant to the inquiry in all cases. Section 125.34(m) now provides that parties shall have the right to cross-examine a witness who appears at an adjudicatory hearing to the extent that such cross-examination is necessary for a full and true disclosure of the facts.

J. You suggested that the provision in the proposed Regulations that allowed the presiding officer at the regional level discretion to hold an "appeal" type hearing at any time, be deleted. We have deleted that section from the Regulations.

K. You requested that the Regulations be amended to state that the filing of an application will not preclude legal action under the Refuse Act as well as under the Federal Water Pollution Control Act except as provided in section 402(k) of the Federal Water Pollution Control Act. This has been accomplished in §125.42(b) of the final rulemaking.

Thank you for the interest you have taken in the formulation of the procedural Regulations for the National Pollutant Discharge Elimination System. Your comments are interesting, informative, and always welcome.

Sincerely yours,

Robert W. Fri
Acting Administrator

Enclosure

20-733 O - 73 - pt. 1A - 80

HENRY S. REUSS, WIS., CHAIRMAN
JOHN E. MOSS, CALIF.
DANTE B. FASCELL, FLA.
FLOYD V. HICKS, WASH.
LEO J. RYAN, CALIF.
L. H. FOUNTAIN, N.C.
JACK BROOKS, TEX.

GUY VANDER JAGT, MICH.
GILBERT GUDE, MD.
PAUL N. McCLOSKEY, JR., CALIF.
ALAN STEELMAN, TEX.
JOEL PRITCHARD, WASH.

225-6427

NINETY-THIRD CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-C
WASHINGTON, D.C. 20515

June 8, 1973

Mr. Robert W. Fri
Acting Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Fri:

Thank you for your June 7, 1973 letter to us in reply to our February 9 letter concerning your agency's regulations for the National Pollution Discharge Elimination System.

We appreciate greatly the time you have taken to respond to the points we made in our February 9 letter. Your reply indicates that you have given our views careful consideration and, at first glance, we think you have made substantial improvements in the draft regulations.

I am instructing our staff to review your response and your final regulations in greater detail and advise our Subcommittee. Hence, we may want to comment further on some of your provisions. But it is good to see that you have made a significant attempt to meet our objections and adopt our suggestions.

We look forward to working further with your agency as this program evolves and on other matters.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

PART C.—CORRESPONDENCE RE: APPLICABILITY OF FISH AND WILDLIFE COORDINATION ACT TO PERMITS ISSUED BY EPA AND STATES UNDER SECTION 402 OF FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

[illegible]
[illegible]
FLOYD V. HICKS, WASH.
JOHN CONYERS, JR., MICH.
BELLA S. ABZUG, N.Y.

GUY VANDER JAGT, MICH.
GILBERT GUDE, MD.
PAUL N. McCLOSKEY, JR., CALIF.
SAM STEIGER, ARIZ.

225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

December 15, 1972

Dr. Robert M. White
Administrator
National Oceanic & Atmospheric Administration
Department of Commerce
Washington, D. C. 20230

Dear Dr. White:

Enclosed for your information is a copy of our letter of December 11, 1972, to the Administrator of the Environmental Protection Agency. Our letter discusses EPA's proposed guidelines (published on Nov. 11, 1972; 37 F.R. 24088), concerning State programs for issuing waste discharge permits; and EPA's proposed regulations of November 27, 1972 (now pending at the Office of Management and Budget) to govern EPA's issuance of such permits.

Our letter points out, on pages 12 and 13, that the Fish and Wildlif Coordination Act applies to every permit issued by EPA.

However, we are also concerned about the extent to which the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration will have an opportunity to comment on permits issued by a State pursuant to a program approved by EPA under section 402 of the Federal Water Pollution Control Act, as amended by Public Law 92-500.

The Coordination Act (16 U.S.C. 662) refers to modifications of water "by any public or private agency under Federal permit or license." While the States, under section 402, will actually issue the permits, they do so under a Federal program. The permits cannot be issued by a State (a) if they fail to comply with the requirements of section 402 of the Federal law and the EPA guidelines, or (b) if EPA, under section 402(d)(2), objects to their issuance within a prescribed period. Indeed, as we point out on page 6 of our letter of December 11 (with respect to another issue) the Act clearly contemplates that EPA must review all permit applications, unless they are for a category of point sources for which such review has been waived under section 402(e) of the Act "at the time" EPA approves the State permit program. Even after a permit is issued by a State, EPA must enforce the permit's terms and conditions under section 309.

We think that the permit program is similar to the water quality standards program for interstate waters. There, the States adopted the standards. Once adopted by a State, EPA had to review and approve them. (This procedure is very similar to that to be employed for the permit program). Based on this approval, it has been EPA's interpretation that the State's water quality standards are Federal, as well as State, standards. In short, the fact that the permit forms approved by the State purport to be State permits does not minimize the Federal role in the issuance of the permits and should not be narrowly construed by EPA to take them out of the ambit of the Coordination Act.

We believe this is an important matter that should be promptly resolved before EPA approves any State program under section 402 or grants any waivers under section 402(e) of the Federal Water Pollution Control Act. We, therefore, request that both Interior and NOAA promptly meet with EPA's Administrator to resolve this issue.

Please advise us by January 15, 1973 of the results of your meeting.

We are sending a similar letter to Assistant Secretary Reed, and we are urging the Administrator of EPA to adopt the view that the Coordination Act does apply to these permits.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

John D. Dingell

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and
Wildlife Conservation

Encl

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

JAN 19 1973

Honorable Henry S. Reuss
Chairman, Subcommittee on Conservation
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

JAN 23 RECD

Dear Mr. Reuss:

Thank you for your letter of December 15, 1972, which was also signed by Congressman Vander Jagt and Congressman Dingell. Your letter expressed concern about the extent to which the Bureau of Sport Fisheries and Wildlife (BSFW) and the National Oceanic and Atmospheric Administration (NOAA) will have an opportunity to comment on permits issued by a State, pursuant to a program approved by EPA under sec. 402 of the Federal Water Pollution Control Act, as amended by P.L. 92-500 (the Act).

We agree that BSFW and NOAA must have a key role to play in assisting the Environmental Protection Agency in fulfilling the requirements of the Federal Water Pollution Control Act amendments of 1972 in a manner consistent with the Coordination Act and other environmentally protective legislation affecting the programs carried out under the Act.

It was this concern which led us to broad discussion of the Act with EPA in early December. We have had further contact with that agency regarding our role under the Fish and Wildlife Coordination Act. As you are probably aware, the EPA guidelines promulgated on December 22, 1972, for State participation in the National Pollutant Discharge Elimination System, do not specifically require State notification to BSFW and NOAA so that comments under the Fish and Wildlife Coordination Act may be provided to the State concerned. We hope that the general language in sec. 124.34 regarding notice to other government agencies will be interpreted or amended to require timely notice to NOAA and the Bureau of Sport Fisheries and Wildlife and will be in further contact with EPA on this. We will keep you advised of our progress.

I should point out also that EPA's proposed regulations in the Federal Register of January 11, 1973, which govern the issuance or denial of permits under sec. 402 and sec. 405 of the Act do require

the regional administrators of EPA to consult with officials of the Departments of Interior and Commerce whenever the provisions of the Fish and Wildlife Coordination Act apply (sec. 125.14(f)). This, I think, is an indication that the Environmental Protection Agency is aware of the requirements of the Coordination Act and intends to take these requirements into account in its operation under the Federal Water Pollution Control Act Amendments. We are in the process of reviewing these proposed regulations with the intention of suggesting such changes as may be appropriate.

Sincerely,

Robert M. White
Administrator

HENRY S. REUSS, WIS., CHAIRMAN
JOHN E. MOSS, CALIF.
DANTE B. FASCELL, FLA.
FLOYD V. HICKS, WASH.
JOHN CONYERS, JR., MICH.
BELLA S. ABZUG, N.Y.

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GILBERT GUDE, MD.
PAUL N. McCLOSKEY, JR., CALIF.
SAM STEIGER, ARIZ.

225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

January 30, 1973

Dr. Robert M. White
Administrator
National Oceanic and Atmospheric Administration
Department of Commerce
Washington, D.C. 20230

Dear Dr. White:

Thank you for your reply of January 19, 1973, to our December 15, 1972, letter to you concerning application of the Fish and Wildlife Coordination Act to permits issued by the Environmental Agency and the States pursuant to section 402 of Public Law 92-500.

We are pleased that you initiated "broad discussions" with EPA on this subject. We are concerned, however, that thus far, they have not been very fruitful.

As you note, the State permit guidelines promulgated by EPA on December 22, 1972, "do not specifically require State notification to BSF&W and NOAA so that comments under the Fish and Wildlife Coordination Act may be provided to the State concerned". You express the "hope" that section 124.34 of those guidelines "will be interpreted", presumably by each State, to "require timely notice" to your agency and the BSF&W.

In our view, such a vague "hope" is not reassuring. A specific provision requiring notice and consultation under the Coordination Act is essential to insure that all, not just some, States will in fact consult with NOAA, the BSF&W, and the appropriate State fish and game agencies.

Your letter also notes that EPA's proposed regulations of January 11 1973 (38 F.R. 1361) requires, in section 125.14(f), that EPA "consult... whenever" the provisions of the Coordination Act "apply" to a permit application. This provision is inadequate also.

This provision is nearly identical to a provision in the Corps of Engineers' proposed Refuse Act regulations of December 23, 1970 (35 F.R. 20005) We objected vigorously to that provision, and it was changed to accord with the statutory language of the Coordination Act when the Corps' regulations were finally promulgated on April 7, 1971 (36 F.R. 6564, Secs. (c)(3) and (d)(6)).

The Coordination Act applies to all discharges of pollutants into any waterway. EPA's regulations should recognize this. Indeed, Interior and NOAA should insist on this. The January 11 provision implies otherwise and leaves it up to EPA's regional administrators to decide when the Coordination Act will or will not "apply". The law does not give them that discretion.

We think that if you join Interior in your discussions with EPA on this matter, the discussions might be more fruitful.

This is a matter of grave concern to us.

Last year the Senate-passed version of the water pollution bill and the House Committee-reported bill contained a provision which would have made the coordination Act inapplicable to the new permit program. We and over 40 other Members co-sponsored an amendment, with no Administration support, to strike this undesirable provision on the House Floor, but a vote was unnecessary because the amendment was accepted by Congressman Wright for the House Committee (Cong. Rec., Mar. 29, 1972, p. H2735, daily issue), and subsequently approved by the Conferees.

However, our efforts will be undermined if Interior and NOAA fail to insist that EPA revise the above guidelines and proposed regulations to insure that the Coordination Act applies to all permits issued by (a) the States, and (b) EPA under section 402 of Public Law 92-500.

Please advise us of your progress by February 9, 1973.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and Wildlife
Conservation
Committee on Merchant Marine and
Fisheries

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

FEB 9 1973

FEB 13 RECD

Honorable Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Your letter of January 30, 1973, signed also by Congressman Vander Jagt and Congressman Dingell, reemphasizes your concern that the Fish and Wildlife Coordination Act be applied to all discharges of pollutants into any waterway.

We have discussed this issue with the Department of the Interior, as you suggested, and it is clear that both the Departments of Commerce and Interior and NOAA fully agree that from a policy viewpoint the Fish and Wildlife Coordination Act should apply to all discharges of pollutants into any waterway. Furthermore, the NOAA legal staff and, we understand, the Department of the Interior's Solicitor's Office, are of the opinion that, from the legal viewpoint, the Coordination Act applies to the new permit program carried out under the Federal Water Pollution Act Amendments of 1972.

In cooperation with the Department of the Interior, we have vigorously pursued this matter with the Environmental Protection Agency.

I am sorry that I cannot report to you at this time that our efforts have been one hundred percent effective in securing EPA's recognition of the full impact of the Coordination Act. However, that subject, along with the other aspects of our efforts to coordinate and cooperate fully with EPA is being pursued at high levels. I can appreciate your impatience that we have not fully resolved this problem. I can assure you, however, that the discussions indicate that all of the agencies involved are deeply concerned with the environmental problems with which we are faced and are looking for the most effective solutions. When we reach a satisfactory understanding with EPA with respect to our role in the NPDES program, we plan to carry out our responsibilities by first addressing those permit applications which will have the greatest effect on the fishery resources.

While the Coordination Act has been uppermost in our minds, we have not been unmindful of the need to fully cooperate with the Environmental Protection Agency in all areas where our expertise and experience would be of value to that Agency in carrying out its functions.

Let me assure you that we will continue to push these matters vigorously with the Environmental Protection Agency and we will utilize whatever means are available to us to assure that the congressional intent underlying the Coordination Act and Water Pollution Control Act Amendments is carried out.

Sincerely,

Robert M. White

Robert M. White
Administrator

WILLIAM S. MOORHEAD, PA., CHAIRMAN
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225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

December 15, 1972

Mr. Nathaniel P. Reed
Assistant Secretary
Department of the Interior
Washington, D. C. 20240

Dear Mr. Reed:

Enclosed for your information is a copy of our letter of December 11, 1972, to the Administrator of the Environmental Protection Agency. Our letter discusses EPA's proposed guidelines (published on Nov. 11, 1972; 37 F.R. 24088), concerning State programs for issuing waste discharge permits; and EPA's proposed regulations of November 27, 1972 (now pending at the Office of Management and Budget) to govern EPA's issuance of such permits.

Our letter points out, on pages 12 and 13, that the Fish and Wildlife Coordination Act applies to every permit issued by EPA.

However, we are also concerned about the extent to which the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration will have an opportunity to comment on permits issued by a State pursuant to a program approved by EPA under section 402 of the Federal Water Pollution Control Act, as amended by Public Law 92-500.

The Coordination Act (16 U.S.C 662) refers to modifications of water "by any public or private agency under Federal permit or license." While the States, under section 402, will actually issue the permits, they do so under a Federal program. The permits cannot be issued by a State (a) if they fail to comply with the requirements of section 402 of the Federal law and the EPA guidelines, or (b) if EPA, under section 402(d)(2), objects to their issuance within a prescribed period. Indeed, as we point out on page 6 of our letter of December 11 (with respect to another issue) the Act clearly contemplates that EPA must review all permit applications, unless they are for a category of point sources for which such review has been waived under section 402(e) of the Act "at the time" EPA approves the State permit program. Even after a permit is issued by a State, EPA must enforce the permit's terms and conditions under section 309.

We think that the permit program is similar to the water quality standards program for interstate waters. There, the States adopted the standards. Once adopted by a State, EPA had to review and approve them. (This procedure is very similar to that to be employed for the permit program). Based on this approval, it has been EPA's interpretation that the State's water quality standards are Federal, as well as State, standards. In short, the fact that the permit forms approved by the State purport to be State permits does not minimize the Federal role in the issuance of the permits and should not be narrowly construed by EPA to take them out of the ambit of the Coordination Act.

We believe this is an important matter that should be promptly resolved before EPA approves any State program under section 402 or grants any waivers under section 402(e) of the Federal Water Pollution Control Act. We, therefore, request that both Interior and NOAA promptly meet with EPA's Administrator to resolve this issue.

Please advise us by January 15, 1973 of the results of your meeting.

We are sending a similar letter to the Administrator of NOAA, and we are urging the Administrator of EPA to adopt the view that the Coordination Act does apply to these permits.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

John D. Dingell

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and
Wildlife Conservation

Encl

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN - 8 1973

Dear Mr. Chairman:

Thank you for your letter of December 15, 1972 concerning applicability of the Fish and Wildlife Coordination Act to the State permit program contemplated by section 402(b) of Public Law 92-500.

We share your concern that the State permit procedure might not allow sufficient consideration of fish and wildlife values, and have so advised the Environmental Protection Agency. In commenting on the proposed guidelines of November 11, the Department has objected that the State permit program does not specifically recognize the applicability of the Fish and Wildlife Coordination Act.

I am determined that this question be resolved prior to final promulgation of the guidelines and prior to EPA approval of any such State permit program.

We appreciate your expression of interest, and will keep you advised as to further developments.

Sincerely yours,

Nathaniel P. Reed
Assistant Secretary for Fish
and Wildlife and Parks

Hon. Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

HENRY S. REUSS, WIS., CHAIRMAN
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NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

225-6427

January 29, 1973

Mr. Nathaniel P. Reed
Assistant Secretary
Department of the Interior
Washington, D.C. 20240

I.

Thank you for your letter of January 8, 1973, in reply to our letter of December 15, 1972, concerning our request "that both Interior and NOAA promptly meet with EPA's Administrator to resolve" the issue of their respective roles under the Fish and Wildlife Coordination Act with regard to permits issued by EPA or the States pursuant to Section 402 of Public Law 92-500.

You state in your letter that you are "determined" to resolve this issue "prior to final promulgation of the guidelines and prior to EPA approval of any such State permit program".

Somehow, that did not occur. EPA issued its final guidelines on State participation in the permit program on December 22, 1972 (37 F.R. 28389), i.e. several days before your letter. The Guidelines do not mention the application of the Coordination Act to permits issued by the States.

Moreover, on January 11, 1973, EPA published for public comment its proposed regulations (38 F.R. 1361) for issuance of permits by EPA. Section 125.14(f) of these proposed regulations states:

> "(f) Whenever the provisions of the Fish and Wildlife Coordination Act, U.S.C. 662, apply, Regional Administrators shall consult with appropriate officials of the U.S. Department of the Interior and the U.S. Department of Commerce, and with the head of the agency exercising administration over the wildlife resources of the State in which the discharge will occur."

This provision is nearly identical to one in the Refuse Act permit regulations proposed by the Corps of Engineers on December 23, 1970 (35 F.R. 20005). We objected vigorously to that provision, and it was changed to accord with the statutory language of the Coordination Act when the Corps' regulations were promulgated on April 7, 1971 (36 F.R. 6564, sections (c)(3) and (d)(6)).

The Coordination Act applies to all discharges of pollutants into any waterway. EPA's regulations should recognize this. Indeed, Interior and NOAA should insist on this. But the above-quoted paragraph implies that some discharges are not subject to the Coordination Act.

We again request that Interior undertake to meet with EPA officials immediately to resolve the problems we have outlined above.

Administrator White of NOAA advised us on January 19 that his agency began such discussions "in early December". Obviously, those discussions seemtoo have been equally fruitless. Perhaps this is because Interior Failed to join with NOAA. We think Interior should, even at this late date, do so.

This is a matter of grave concern to us.

Last year, the Senate-passed version of the water pollution bill and the House Committee-reported bill contained a provision which would have made the Coordination Act inapplicable to the new permit program. We and over 40 other Members co-sponsored an amendment, with no Administration support, to strike on the House floor this undesirable provision, but a vote was not necessary because the amendment was accepted by Congressman Wright for the House Committee (Cong. Record, March 29, 1972, p. H2735, daily issue), and subsequently approved by the Conferees. However, our efforts will be undermined if Interior and NOAA fail to insist that EPA revise the above guidelines and proposed regulations to insure that the Coordination Act applies to all permits issued by (a) the States, and (b) EPA under section 402 of Public Law 92-500.

Please advise us of your progress by February 9, 1973.

II.

On a related matter, we call your attention to a January 4, 1973, Bureau of Sport Fisheries and Wildlife reply to our letter of October 30, 1972, concerning your Bureau's plans for reviewing permit applications under section 402 of Public Law 92-500 for discharges in Oregon, Michigan and elsewhere.

The Bureau's letter states in part:

> "Our Bureau has not developed the level of technical knowledge necessary to provide sound advice on all effluent discharges to protect fish and wildlife.

> This knowledge will come through our research efforts over a number of years at considerable cost. In our opinion, the involved Federal agencies must be allowed to 'gear up' to meet the challenge of P.L. 92-500 similarly as the Act requires of participating States in administering their approved programs. As you are aware, we have been required to reduce our staffs and cut funds. Some shifting of priorities has alleviated certain deficiencies, but new major programs cannto be spread among our thinned ranks without reducing the quality of the product. However, we believe a majority of citizens will demand that this Bureau become actively involved with P.L. 92-500 and provide related representation for fish and wildlife interestssat the Federal level. In conclusion, we are jumping into this program with 'both feet' and hope that in the future the necessary funding and trained personnel will be forthcoming to make our involvement truly effective."

This marks the second time in recent months that the Bureau expressed the view that it lacks expertise concerning the effect of effluent discharges on fish and wildlife. This, too, is a matter of great concern to us. If this is in fact the case, then the Bureau should promptly acquire the necessary expertise.

We understand that the Bureau's River Basin Division has a professional staff of approximately 300 persons, most of whom are located outside Washington, D.C. This staff is, we understand, responsible for a number of functions, including the permit programs under the 1899 Act and Public Law 92-500. We wonder whether this staff is being used wisely and whether the Bureau supplements this staff with assistance from other professionals, such as those conducting research and other activities.

In our opinion, these various permit programs and proposals to channelize our waterways deserve considerable priority over other Bureau programs, particularly those involving water resource developments of the Corps and the Bureau of Reclamation and other long-range projects.

The Conservation and Natural Resources Subcommittee will probably be holding additional channelization hearings in March. At that time, we

will expect the Bureau to indicate what steps it has taken or plans to take in the immediate future to improve its expertise in these important areas. We will also want, by February 16, 1973, a detailed statement showing which Bureau programs, functions, divisions, and offices (in Washington and in the Regions) suffered a reduction in staff and funds for (a) the current fiscal year, and (b) fiscal year 1974, and indicating the specific reduction figure in each case.

Sincerely,

/s/
HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

/s/
GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

/s/
JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and
Wildlife Conservation
Committee on Merchant Marine and
Fisheries

Enclosure

HENRY S. REUSS, WIS., CHAIRMAN
JOHN E. MOSS, CALIF.
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FLOYD V. HICKS, WASH.
JOHN CONYERS, JR., MICH.
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SAM STEIGER, ARIZ.

225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

December 15, 1972

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

Our letter of December 11, 1972, to you discusses EPA's proposed guidelines (published on Nov. 11, 1972; 37F.R. 24088), concerning State programs for issuing waste discharge permits; and EPA's proposed regulations of November 27, 1972 (now pending at the Office of Management and Budget) to govern EPA's issuance of such permits. This supplements that letter.

Our letter pointed out, on pages 12 and 13, that the Fish and Wildlife Coordination Act applies to every permit issued by EPA.

However, we are also concerned about the extent to which the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration will have an opportunity to comment on permits issued by a State pursuant to a program approved by EPA under section 402 of the Federal Water Pollution Control Act, as amended by Public Law 92-500.

The Coordination Act (16 U.S.C. 662) refers to modifications of water "by any public or private agency under Federal permit or license." While the States, under section 402, will actually issue the permits, they do so under a Federal program. The permits cannot be issued by a State (a) if they fail to comply with the requirements of section 402 of the Federal law and the EPA guidelines, or (b) if EPA, under section 402(d)(2), objects to their issuance within a prescribed period. Indeed, as we point out on page 6 of our letter of December 11 (with respect to another issue) the Act clearly contemplates that EPA must review all permit applications, unless they are for a category of point sources for which such review has been waived under section 402(e) of the Act "at the time" EPA approves the State permit program. Even after a permit is issued by a State, EPA must enforce the permit's terms and conditions under section 309 of the Federal Water Pollution Control Act.

We think that the permit program is similar to the water quality standards program for interstate waters. There, the States adopted the standards. Once adopted by a State, EPA had to review and approve them. (This procedure is very similar to that to be employed for the permit program). Based on this approval, it has been EPA's interpretation that the State's water quality standards are Federal, as well as State, standards. In short, the fact that the permit forms approved by the State purport to be State permits does not minimize the Federal role in the issuance of the permits and should not be narrowly construed by EPA to take them out of the ambit of the Coordination Act.

We urge that you adopt the view that the Coordination Act does apply to these permits. We believe that this is in the public interest. As a practical matter, the discharges to be authorized by the State permits may, in many cases, have a substantial effect on fish and wildlife. We do not question EPA's expertise on water quality. But the Fish and Wildlife Service, NOAA and the state fish and game agencies certainly have great expertise and competence in fish and wildlife matters which should be utilized in order to achieve proper and effective review of the permit applications.

We believe this is an important matter that should be promptly resolved before EPA approves any State program under section 402 or grants any waivers under section 402(e) of the Federal Water Pollution Control Act. We, therefore, request that you meet with both Interior and NOAA promptly to resolve this issue. We have sent similar letters to Interior and to NOAA.

Please advise us by January 15, 1973 of the results of your meeting.

Sincerely,

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and
Wildlife Conservation

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[illegible], WIS., CHAIRMAN
JOHN E. MOSS, CALIF.
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JOHN CONYERS, JR., MICH.
BELLA S. ABZUG, N.Y.

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SAM STEIGER, ARIZ.

225-6427

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

February 12, 1973

Mr. Russell E. Train
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Train:

Enclosed, for your information, review, and comment, is a copy of our February 9 letter to Administrator William D. Ruckelshaus, commenting on the proposed regulations (38 F.R. 1362) of the Environmental Protection Agency concerning permits issued by EPA pursuant to sections 402 and 405 of Public Law 92-500. Also enclosed is a copy of our letter of January 29 to Assistant Secretary of the Interior Nathaniel P. Reed concerning, in particular, section 125.14(f) of the proposed regulations which relates to the applicability of the Fish and Wildlife Coordination Act to the permit program. A similar letter was also sent to Dr. Robert M. White, Administrator of NOAA.

As you can see, we asked both Mr. Reed and Dr. White to meet with EPA for the purpose of clarifying section 125.14(f) of the proposed regulations so that there would be no doubt that the Coordination Act would apply to all permits issued by a State or EPA under sections 402 and 405 of Public Law 92-500, and to advise us by February 9.

Today, Mr. Reed's office informed us that EPA's General Counsel, Mr. John R. Quarles, Jr., refuses to make any changes in the proposed regulations with regard to the applicability of the Coordination Act to the permit program. Mr. Quarles told Interior and NOAA officials that EPA's Regional Administrators will decide when the Coordination Act will apply to a permit application. He has reverted to a position taken erroneously by the Corps of Engineers in December of 1970 that the Coordination Act does not apply to all discharges into navigable waterways. The Administration discarded this limiting interpretation when the final Corps regulations were adopted in April 1971. This was done after joint House-Senate hearings in February 1971 on the Refuse Act permit program, at which the Corps' position was discredited.

We understand further that Mr. Quarles wants the issue submitted to the Attorney General for resolution. We think this is unnecessary and will delay the program. Most importantly, it calls into question this important environmental statute which was supplemented by NEPA.

The Coordination Act clearly applies to all discharges for which a permit is required under sections 402 and 405 of Public Law 92-500. This was made even more certain by our efforts last year on the water bill. We, along with more than forty

other House Members, sponsored an amendment in March of 1972 to the House version of the Water Pollution legislation which would delete language in that bill which was designed to make the Coordination Act inapplicable to the new permit program. The House Public Works Committee accepted our amendment without the necessity of a vote, and this undesirable provision was deleted from the bill. The joint Senate-House Conference Committee also deleted a similar provision in the Senate version of the Water Pollution legislation. What more does EPA want?

We request that you take this matter up with the Administrator of the Environmental Protection Agency, Assistant Secretary Reed and Administrator White, with a view toward revising EPA's proposed regulations to make it clear that the Coordination Act does in fact apply to all discharge permits issued by EPA or the States under section 402 and 405, without referring the matter to the Justice Department. If, despite our request, EPA does refer the matter to the Attorney General, please notify us.

We hope that it will not be necessary for one or both of our Subcommittees to hold hearings on this matter of an agency such as EPA attempting by administrative fiat to rewrite an Act of Congress. Please advise us by February 22 of the Administration's decision on this matter.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and Wildlife
Conservation
Committee on Merchant Marine and Fisheries

Enclosures

1. Letter dated 2/9/73 from Congressmen Reuss, Vander Jagt and Dingell, to EPA Administrator Ruckelshaus
2. Letter dated 1/29/73 from Congressmen Reuss, Vander Jagt and Dingell, to Assistant Secretary of the Interior Nathaniel P. Reed
3. Letter dated 1/30/73 from Congressmen Reuss, Vander Jagt and Dingell, to NOAA Administrator Dr. Robert M. White
4. Letter dated 2/9/73 from NOAA Administrator White to Congressman Reuss.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

FEB 16 1973

Dear Mr. Chairman:

FEB 20 RECD

Thank you for your letter of February 12 concerning the interrelationship of the Fish and Wildlife Coordination Act and EPA's water quality permit actions under Sections 402 and 405 of the Federal Water Pollution Control Act. We have been advised by EPA that the matter has been referred to the Justice Department for a legal opinion.

In the meantime we will hold discussions with EPA, the Interior Department and NOAA to determine what progress can be made in resolving the issues involved.

Thank you for drawing this matter to our attention.

By a copy of this letter I am also replying to Congressmen Vander Jagt and Dingell.

Sincerely,

Russell E. Train
Chairman

Honorable Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee of the
Committee on Government Operations
Washington, D. C. 20515

cc: Honorable Guy Vander Jagt
Honorable John D. Dingell

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

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CHIEF COUNSEL
MED P. EVERETT
COUNSEL
ERNEST J. CORRADO
COUNSEL
FRANCIS D. HEYWARD
COUNSEL
RICHARD N. SHANDOO
MINORITY COUNSEL

March 8, 1973

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Last month, I joined with Congressmen Reuss and Vander Jagt in a letter to Chairman Train of the Council on Environmental Quality concerning the relationship of the Fish and Wildlife Coordination Act to your agency's water quality permit program under section 401 of the Federal Water Pollution Control Act. A copy of our letter is enclosed.

Since then, Chairman Train has written to us and advised us that your agency referred this matter to the Justice Department "for a legal opinion". Yesterday, CEQ's General Counsel suggested that we phone EPA's office of General Counsel to obtain a copy of EPA's letter to the Attorney General requesting his opinion on the matter. We did so, and were assured by your Assistant General Counsel that it would be sent to us promptly.

Today, he telephoned to say that we must send a written request for a copy of the EPA letter and opinion.

I do not understand why there is this insistence on formalism. However, I hereby request, on behalf of Congressmen Reuss, Vander Jagt, and myself, that a copy of EPA's letter asking the Attorney General for a legal opinion be provided to us by March 12, 1973, together with EPA's legal opinion on the subject. But, at the same time, I express my concern and disapproval at the manner in which your agency has dealt with this Coordination Act matter.

You will recall that on December 11, 1972, Congressmen Reuss, Vander Jagt and I urged that your draft regulations of November 27, 1972, be revised "to make it clear that the requirements of the Fish and Wildlife Coordination Act apply" to all permits. We repeated that request on February 9, 1973. Your reply of February 9 to our December 11 letter stated

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

that you are giving "careful consideration" to our "comments". But it did not mention any intention to seek the Attorney General's opinion concerning the applicability of the Coordination Act to the EPA program. In fact, we did not learn of this until three days later when Interior Department officials advised us that your General Counsel, Mr. Quarles, planned to request such an opinion.

I cannot understand why your agency failed to extend to us the courtesy of informing us of your intention to request such an opinion, particularly in view of our long interest in this matter as shown, for example, by our efforts on the House floor last March.

We continue to believe that your efforts in this regard are detrimental to the objectives, which we all share, of insuring that the permit program will reduce pollution. Thus, we are sending a copy of this letter to the Justice Department, and requesting that agency to withhold issuance of its opinion until (a) the Department of the Interior and NOAA submit their own opinions to the Justice Department on the subject, and (b) until we have had an opportunity to study EPA's opinion and the opinions of the Department of the Interior and NOAA, and comment thereon and/or hold a hearing on the matter.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on Fish and Wildlife
Conservation and the Environment

Enclosure

cc: Attorney General Richard G. Kleindienst

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B349-B
WASHINGTON, D.C. 20515

February 12, 1973

Mr. Russell E. Train
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Train:

Enclosed, for your information, review, and comment, is a copy of our February 9 letter to Administrator William D. Ruckelshaus, commenting on the proposed regulations (38 F.R. 1362) of the Environmental Protection Agency concerning permits issued by EPA pursuant to sections 402 and 405 of Public Law 92-500. Also enclosed is a copy of our letter of January 29 to Assistant Secretary of the Interior Nathaniel P. Reed concerning, in particular, section 125.14(f) of the proposed regulations which relates to the applicability of the Fish and Wildlife Coordination Act to the permit program. A similar letter was also sent to Dr. Robert M. White, Administrator of NOAA.

As you can see, we asked both Mr. Reed and Dr. White to meet with EPA for the purpose of clarifying section 125.14(f) of the proposed regulations so that there would be no doubt that the Coordination Act would apply to all permits issued by a State or EPA under sections 402 and 405 of Public Law 92-500, and to advise us by February 9.

Today, Mr. Reed's office informed us that EPA's General Counsel, Mr. John R. Quarles, Jr., refuses to make any changes in the proposed regulations with regard to the applicability of the Coordination Act to the permit program. Mr. Quarles told Interior and NOAA officials that EPA's Regional Administrators will decide when the Coordination Act will apply to a permit application. He has reverted to a position taken erroneously by the Corps of Engineers in December of 1970 that the Coordination Act does not apply to all discharges into navigable waterways. The Administration discarded this limiting interpretation when the final Corps regulations were adopted in April 1971. This was done after joint House-Senate hearings in February 1971 on the Refuse Act permit program, at which the Corps' position was discredited.

We understand further that Mr. Quarles wants the issue submitted to the Attorney General for resolution. We think this is unnecessary and will delay the program. Most importantly, it calls into question this important environmental statute which was supplemented by NEPA.

The Coordination Act clearly applies to all discharges for which a permit is required under sections 402 and 405 of Public Law 92-500. This was made even more certain by our efforts last year on the water bill. We, alone with more than forty

other House Members, sponsored an amendment in March of 1972 to the House version of the Water Pollution legislation which would delete language in that bill which was designed to make the Coordination Act inapplicable to the new permit program. The House Public Works Committee accepted our amendment without the necessity of a vote, and this undesirable provision was deleted from the bill. The joint Senate-House Conference Committee also deleted a similar provision in the Senate version of the Water Pollution legislation. What more does EPA want?

We request that you take this matter up with the Administrator of the Environmental Protection Agency, Assistant Secretary Reed and Administrator White, with a view toward revising EPA's proposed regulations to make it clear that the Coordination Act does in fact apply to all discharge permits issued by EPA or the States under section 402 and 405, without referring the matter to the Justice Department. If, despite our request, EPA does refer the matter to the Attorney General, please notify us.

We hope that it will not be necessary for one or both of our Subcommittees to hold hearings on this matter of an agency such as EPA attempting by administrative fiat to rewrite an Act of Congress. Please advise us by February 22 of the Administration's decision on this matter.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and Wildlife
Conservation
Committee on Merchant Marine and Fisheries

Enclosures

1. Letter dated 2/9/73 from Congressmen Reuss, Vander Jagt and Dingell, to EPA Administrator Ruckelshaus
2. Letter dated 1/29/73 from Congressmen Reuss, Vander Jagt and Dingell, to Assistant Secretary of the Interior Nathaniel P. Reed
3. Letter dated 1/30/73 from Congressmen Reuss, Vander Jagt and Dingell, to NOAA Administrator Dr. Robert M. White
4. Letter dated 2/9/73 from NOAA Administrator White to Congressman Reuss.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 21 1975

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

Honorable John D. Dingell
Chairman, Subcommittee on Fish and
Wildlife Conservation and the
Environment
Committee on Merchant Marine and
Fisheries
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your letter of March 8 to the Administrator, requesting a copy of EPA's letter requesting an advisory opinion from the Department of Justice on the applicability of the Fish and Wildlife Coordination Act to the issuance of discharge permits under §402 of the Federal Water Pollution Control Act, as amended. You also requested a copy of our opinion of law on that subject. Copies of both documents are enclosed.

I am at a loss to understand the basis for the objections which you have raised concerning this matter. If your primary concern is to ensure that the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration will be given an opportunity to comment and provide advice on proposed permit issuance actions, I would like to assure you that ample opportunity will be provided for such comment and advice by our regulations for the National Pollutant Discharge Elimination System (NPDES). Our regional personnel will be directed to provide permit application forms to Interior and NOAA upon request, and will be authorized to include in permits conditions recommended by those agencies as necessary to avoid substantial impairment of fish, shellfish, or wildlife resources.

There are, however, two potential situations which give us concern, were the Fish and Wildlife Coordination Act to be specifically applicable to all discharge permits. It may be necessary, where abatement of pollution is of particular urgency, to issue a permit after providing a relatively short time for receiving comments

from other Federal agencies and the public. If one of the agencies with which consultation is required by the Fish and Wildlife Coordination Act had, in such a case, failed to provide comments in time, an action might lie against the Agency where an interested person alleged that we had failed to "consult", as required by that Act. Thus polluters might utilize that Act to delay needed clean-up measures.

In the second situation, even though we might have received comments from Interior and NOAA, and included conditions in a permit based upon their recommendations, the issuance of the permit might still be subject to challenge on the grounds that no plan had been developed with the concurrence of the State wildlife agency, EPA, and NOAA or Interior, for the use of controlled waters for wildlife purposes, as required by 16 U.S.C. §663(b). The very absurdity of a requirement that such a plan be developed for a discharge permit under Section 402 of the Federal Water Pollution Control Act would appear to underscore the conclusion that under a proper statutory interpretation the Fish and Wildlife Coordination Act would not, except under special circumstances set forth in the attached documents, apply to the issuance of permits under Section 402.

We believe that it is of the highest urgency for the enormous task of abating water pollution to begin immediately. In light of our commitments regarding review and comment by affected Federal agencies, including the Department of the Interior and NOAA, it does not seem likely that the environment would be better served by applying the Fish and Wildlife Coordination Act to NPDES permits. In this connection, I would hope that a prompt opinion from the Department of Justice will settle this issue one way or the other, and enable us to move forward with the task.

Sincerely,

John Quarles

John R. Quarles, Jr.
Assistant Administrator for
Enforcement and General Counsel

Enclosures

cc: Office of Legal Counsel
Department of Justice

OGC-W #966

FEB 16 1973

Honorable Roger Cramton
Assistant Attorney General
Office of Legal Counsel
Room 5131
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Cramton:

A disagreement has arisen between our Agency and the Department of the Interior regarding the proper interpretation of the Fish and Wildlife Coordination Act, 16 U.S.C. §661 et seq. Specifically, the disagreement concerns two questions: 1) whether the requirement in that Act for consultation with the Department of the Interior applies to the issuance of federal discharge permits by the Administrator of the Environmental Protection Agency under section 402(a) of the Federal Water Pollution Control Act, as amended by P.L. 92-500 (FWPCA); and 2) whether such requirement applies to the issuance of permits by the various States under State permit programs approved by the Administrator pursuant to section 402(b) of the FWPCA. We have agreed with the Department of the Interior to obtain an opinion from you on these questions.

In my opinion, the requirement in the Fish and Wildlife Coordination Act for consultation with the Department of the Interior applies to federal permit issuance under section 402 of the FWPCA only in those cases where the permitted discharge could accumulate and block a watercourse, or where the discharge is of such high velocity that it would result in a dredging or gouging out of a streambed. Additionally, it is my opinion that the consultation requirement of the Fish and Wildlife Coordination Act has no applicability to issuance of permits by the various States under State permit programs approved by the Administrator pursuant to section 402(b) of the FWPCA. I enclose a memorandum of law setting forth the basis for these conclusions.

I am sending a copy of this letter and the enclosed memorandum to the Department of the Interior, with the understanding that you will be promptly furnished with an explanation of that Department's views. We are interested in obtaining a prompt resolution of these issues, since proceedings for the issuance of permits under section 402 of the FWPCA have already begun, and we wish to be certain that these proceedings have a sound legal basis. If you have any questions concerning this matter please do not hesitate to call me or Mr. Robert V. Zener of my office.

Sincerely yours,

/S/

John R. Quarles, Jr.
Assistant Administrator for
Enforcement and General Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 14 1973

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

MEMORANDUM

TO : Assistant Administrator for Enforcement and General Counsel

Approved John Zewalds 2/15/73

FROM : Associate General Counsel, Water

SUBJECT : Application of the Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.) to the Issuance of Permits Under Section 402 of the Federal Water Pollution Control Act, as amended.

Question

Is the Administrator or a State required by the Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.) to consult with the Secretary of the Interior and the Secretary of Commerce prior to issuing a permit under Section 402 of the Federal Water Pollution Control Act, as amended?

Answer

Such consultation is not required of the States in any case. The Administrator would not be required to provide for such consultation except in the cases of discharges which could accumulate and block a watercourse, or discharges of such high velocity that they would result in a dredging or gouging out of a streambed.

Discussion

Section 402 of the Federal Water Pollution Control Act, as amended, (FWPCA), authorizes the Administrator of the Environmental Protection Agency to issue permits "for the discharge of any pollutant" to "navigable waters," which includes "the waters of the United States, including the territorial sea." The term "pollutant" is defined broadly in Section 502(6) to mean virtually any type of matter which might be discharged into water, including "dredged spoil, solid waste, incinerator residue, sewage, . . . rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." This definition includes

some materials which might accumulate so as to result in an impoundment or diversion; however, in the usual case, pollutants which are regulated by this program are dissolved in the water, and do not physically affect the channel or watercourse.

Section 304(h) authorizes the Administrator to promulgate regulations establishing minimum procedural and other elements of State permit programs. Under Section 402(b), a State may submit a program to the Administrator; unless the Administrator determines that a State's program does not conform to the guidelines or the requirements of law, he is required by Section 402(c) to cease issuing discharge permits for the waters subject to the State program. After this determination is made, the State may issue permits without Federal approval; however, under Section 402(d), the Administrator may veto issuance of a proposed permit if he finds it to be outside the guidelines and requirements of the FWPCA.

The Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.) requires that "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency shall first consult with the . . . Department of the Interior . . . ." 1/ It is clear that the intent of this section is to require such consultation only by Federal agencies with responsibility over water resource projects in which actual dredging, filling, stream channelization, or other direct modification of water courses is carried out. This is borne out by the language of 16 U.S.C. §662, quoted in part above, which also requires consultation with "the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed . . . ." Such consultation is for the purpose of preventing loss and damage to wildlife resources "in connection with such water-resource development."

1/ 16 U.S.C. §662(a). Certain of the responsibilities of the Secretary of the Interior under this section are shared by the Secretary of Commerce pursuant to Reorganization Plan No. 4 of 1970.

The plain language of the statute applies only to "water-resource development", and not to discharge permits under the Refuse Act of 1899 or under §402 of the Federal Water Pollution Control Act. The only cases construing these provisions of the Fish and Wildlife Coordination Act have involved actual modification of water courses through dredging and filling or construction of dams. 2/

As you know, however, the Department of the Interior insisted upon a role in the administration of the original Refuse Act Permit Program. As a result, Executive Order 11574, Dec. 23, 1970, 35 FR 19627, requires consultation with the Secretary of the Interior and the Secretary of Commerce "regarding effects on fish and wildlife where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made." The preamble to the Executive Order cites the Fish and Wildlife Coordination Act as among the authorities for its issuance.

This requirement would apply in only a very few cases. It is difficult to imagine a discharge which would meet the requirements set forth in the Executive Order for consultation with Interior, and which would not require a permit from the Corps of Engineers for dredging and filling under Section 10 of the Rivers and Harbors Act of 1899, or for the discharge of dredged or fill material under Section 404 of the FWPCA, thereby invoking the Fish and Wildlife Coordination Act by its own terms. The regulations under which the Corps of Engineers formerly operated the permit program, however, went beyond the requirements of the Executive Order. They required consultation with NOAA and Interior with respect to all permits, whether or not meeting the requirements of the Executive Order. 3/ Furthermore, regional representatives of NOAA or Interior could by objecting block issuance of any permit at the regional level, and force the matter to headquarters for resolution. 4/

2/ E.g., Udall v. FPC, 87 S. Ct. 1712, 387 U.S. 428 (1967); Zabel v. Tabb, 430 F. 2d 199 (5th Cir. 1970); State of California v. FPC, 345 F. 2d 917 (9th Cir. 1965); Environmental Defense Fund v. Corps of Engineers, 325 F. Supp. 728 (E.D. Ark. 1970); Delaware v. Pennsylvania New York Central Trans. Co., 323 F. Supp. 487 (D. Del. 1971).

3/ 33 C.F.R. §209.131(i)(3) (1972).

4/ 33 C.F.R. §209.131(i)(7).

Apparently believing that these coordination requirements were statutory and not discretionary, the drafters of both S.2770 and H.R.11896 included provisions limiting the consultation requirements of the Fish and Wildlife Coordination Act to certain regulations and guidelines. 5/ However, an amendment deleting that section was adopted on the floor of the House of Representatives. 6/ Congressman Wright, in introducing the measure, described it as a "corrective amendment," which "would make the Fish and Wildlife Coordination Act applicable in every respect that it applies by its own terms to all sections of the bill." 7/ (Emphasis supplied).

Although this statement on the floor is consistent with the view that the Fish and Wildlife Coordination Act would not apply to §402 permits, Mr. Dingell, Mr. Reuss, and the other supporters of the so-called "clean-water package" of amendments may not accept this view. Mr. Dingell rose in support of the Wright amendment, stating that "this is one of the amendments my colleagues and I were going to offer although in slightly different form." 8/ However, supporters of the "clean water" amendments stated that the amendments would have made the Fish and Wildlife Coordination Act specifically applicable to discharge permits as well as to dredge and fill permits. 9/

As I see it, then, the Fish and Wildlife Coordination Act would be applicable to the issuance of Federal permits under Section 402 of the FWPCA only in those cases where it is proposed to issue permits for discharges which could accumulate and eventually result in the impoundment, diversion, or modification of the course of "navigable waters," or for discharges of such high velocity that a streambed would be dredged or gouged out.

One further issue--the applicability of the Fish and Wildlife Coordination Act to permit programs operated by the States--requires clarification. The view of the Department of the Interior, as I understand it, is that since the States receive Federal approval for their permit programs, the issuance of permits by the States may be said to be authorization "by any public or private agency under Federal permit or license," thereby requiring consultation with the Secretary of the Interior under 16 U.S.C. §662.

5/ §511(b), S.2770, H.R.11896 (1971).

6/ Cong. Rec., March 29, 1972 at H2735.

7/ Id. The Fish and Wildlife Coordination Act could apply by its own terms to permits for disposal of dredged or fill material under §404, FWPCA.

8/ Id.

9/ See Cong. Rec., March 28, 1972 at H2646.

There are at least two respects in which permit programs operated by the States must be distinguished from the authorizations "under Federal permit or license" referred to in the Fish and Wildlife Coordination Act. First, the concept of "Federal permit or license" is inapplicable to the Environmental Protection Agency's approval of a State's permit procedures under Section 402(c) of the FWPCA. Under that subsection, the States receive no authorization, by permit, license, or otherwise, from the Federal government, to carry out a permit program. Section 402(c)(1) simply requires the Administrator to suspend the issuance of permits unless he determines that the State permit program is not in accordance with Federal guidelines or with the requirements of the Act.

In addition, the statute and the legislative history make it clear that the States must operate a permit program under their own authority, not under delegated Federal authority. In fact, it was clarified by Congressman Wright, one of the conferees on the final legislation, that other Federal statutes would not be applicable to State discharge permits because they were to be issued under State, not Federal, law:

> [T]he States, under State law, could issue State discharge permits. These would be State, not Federal, actions, and thus, whether for existing or new sources under section 306, such permits would not require environmental impact statements. Cong. Rec., Oct. 4, 1972, at H9129.

For these reasons, I do not think that Section 402(c), which requires EPA to cease issuing permits unless it determines that a State's program is not in compliance with legal requirements, is tantamount to a "Federal permit or license" to carry out a permit program. Indeed, States were free to enact laws requiring discharge permits prior to the enactment of the Federal Water Pollution Control Act Amendments of 1972. Many States enacted such laws. The only change effected by Section 402 is that, if the State's program meets certain requirements, dischargers receiving permits from the State will be insulated from Federal enforcement action.

It cannot be said that, simply because the Administrator does not veto a permit under Section 402(d), he has issued a "Federal permit or license" for the permitted discharge. As long as the State operates within the confines of federally established guidelines, and within the requirements of the FWPCA, EPA has no authority to determine whether or not a particular discharge will be permitted. That authority resides entirely with the State.

Even if States are found to be subject to the Fish and Wildlife Coordination Act for discharge permits under State law, such coordination would of course extend no further than that which is required for the Federal permit program. As I have indicated above, I doubt that more than a few permits would be involved.

Regardless of the applicability of the Fish and Wildlife Coordination Act, the applications for permits under Section 402 are public in all cases, and our permit program procedures require opportunity for public comment. Accordingly, there will be ample opportunity for the expression of views of the Department of the Interior with respect to the issuance of all permits.

Robert V. Zener

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MAR 16 1973

RECEIVED
MAR 21 1973
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

Honorable Henry S. Reuss
Chairman
Conservation and Natural Resources
Subcommittee of the
Committee on Government Operations
Rayburn House Office Building, Room B349-B
House of Representatives
Washington, D. C. 20515

Dear Mr. Reuss:

In response to a request made informally by Mr. David Finnegan of your Committee's staff, there is enclosed a copy of this Department's March 15 submission to the Department of Justice with reference to the question submitted by the Environmental Protection Agency concerning the applicability of the Fish and Wildlife Coordination Act to water pollutant discharge permits issued pursuant to the Federal Water Pollution Control Act, as recently amended.

Sincerely yours,

Bernard R. Meyer

Bernard R. Meyer
Associate Solicitor
Parks and Recreation

Enclosure

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 1973

Re: The Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)

Dear Mr. Dixon:

Reference is made to a letter of February 16 and legal memorandum of February 14, 1973, submitted to you by John Quarles Jr., Assistant Administrator and General Counsel of the Environmental Protection Agency, in regard to the applicability of the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq., to water pollutant discharge permits issued pursuant to section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500). As you know, this Department considers that, within the meaning of the Coordination Act, water is "modified" by the discharge of pollutants into it and, therefore, pursuant to the requirements of the Coordination Act, the Department must be consulted prior to the issuance of pollutant discharge permits pursuant to section 402 of the Water Pollution Control Act. Since the Environmental Protection Agency takes a contrary view, your opinion is requested in order to resolve the issue.

Enclosed please find the opinion of our Solicitor setting forth the basis of our position. I am sure he will be pleased to provide you with any further information you may request. If I can assist you further in any way, please do not hesitate to let us know.

Sincerely yours,

John Whitaker

Acting Secretary of the Interior

Honorable Robert G. Dixon, Jr.
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Washington, D.C. 20530

Enclosure

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

MAR 9 - 1973

Memorandum

To: Secretary of the Interior
DEPUTY

From: Solicitor

Subject: Application of the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.) to the Issuance of Permits under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500).

We have been requested to consider whether the Administrator of the Environmental Protection Agency (E.P.A.) is required by the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq., hereinafter referred to as the "Coordination Act") to consult with the Secretary of the Interior prior to issuing a permit, or reviewing a state's proposed issuance of a permit, pursuant to section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), (hereinafter referred to as "FWPCA"). It is our view that he must engage in such consultation in the implementation of the permit program under section 402 of FWPCA.

There are in fact two questions presented here: (1) whether E.P.A. is bound by the Coordination Act when issuing licenses or permits in its own right pursuant to subsection 402(a) of FWPCA and (2) whether E.P.A. is bound by the Coordination Act when reviewing permits proposed to be issued by individual states pursuant to subsections 402(b)-(k) of FWPCA. E.P.A.'s direct permit authority is examined first.

1. E.P.A.'s Permit Authority Pursuant to Section 402(a) of FWPCA.

The Coordination Act in section 662(a) of Title 16, U.S.C., provides that:

> [W]henever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other

> body of water otherwise controlled or modified for any purpose whatever . . . by a Federal agency . . . such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior . . . with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development. (Emphasis added).

It is apparent that this statute requires consultation with Interior in regard to water resources projects such as dams, dredging, canals, and other physical modification of watercourses. However, the statute contains, as set forth above, a very broad "catch-all" phrase, namely, the words "controlled or modified for any purpose whatever." The critical legal issue is whether this phrase encompasses modifications to water and control of water occasioned by the discharge of pollutants into water as well as physical modifications to waterways.

The legislative history of the Coordination Act gives no indication as to the scope of the words "controlled or modified for any purpose whatever."1/ Its plain language, however, and the usual legal definitions of "control" and "modify," lead to the conclusion that waters may be "controlled or modified" by the discharge of pollutants into the water. For example, Black's Law Dictionary (Rev. 4th Ed., 1968), at page 1155, defines the verb "modify," in part, as "[T]o alter; to change in incidental or subordinate features . . . ." Water, we feel, is "altered" by the addition of pollutants and water quality is an "incidental or subordinate feature" of water which is changed by the addition of pollutants. In these circumstances, the Administrator, when issuing permits which permit the control or modification of water by the discharge of pollutants, is required to consult with the Department of Interior in accord with the Act. This interpretation of the literal language of the statute gives meaning to the catch-all phrase, is consistent with other indicia of the statute's intention, as described below, and conforms to the statute's general purpose of protecting and enhancing fish and wildlife resources. Further, subsection (g) of Section 662, 16 U.S.C., states that:

> The provisions of this section shall be applicable with respect to any project for the control or use of water as prescribed herein . . . (Emphasis added).

1/ See S. Rep. 1981, 85th Cong., 2nd Sess. (1958). There was no floor debate on the measure and no recorded hearing.

In our view, it can hardly be argued that a program to discharge or deposit pollutants in waters is not a "project for the control or use of water."

Previous administration and implementation of the Coordination Act lend support to our view as to its applicability to water pollutant matters. Pursuant to section 13 of the Refuse Act of 1899, 30 Stat. 1152, 33 U.S.C. 407, and Executive Order 11574, issued December 23, 1970, the Corps of Engineers on April 7, 1971, issued regulations which dealt with the issuance of permits for the discharge of pollutants into navigable waters. 2/

The Corps' regulations state, after citing and quoting the Coordination Act in section 209.131(c)(3), as follows:

> (c) Recognizing that, at the Federal level, responsibility for the protection of fish and wildlife resources lies primarily with the Department of Interior and with the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce, the appropriate Regional Director of the National Marine Fisheries Service of NOAA and the appropriate Regional Coordination or Field Representative of the Department of the Interior will advise the appropriate District Engineer and the appropriate Regional Representative of E.P.A. of the impact, if any, which a proposed discharge or deposit may or is likely to have on fish and wildlife resources and will, in appropriate cases, recommend conditions considered necessary to afford reasonable protection to such resources. 3/

The regulations go on to set forth in detail the procedure by which the required consultations with Interior will take place prior to issuance of permits. 4/ Regulations of this nature have been recommended by the Department in regard to E.P.A.'s procedures for licensing discharges of pollutants.

It is noted that the Executive Order which implemented the permit program under the Refuse Act of 1899 did not clearly set forth the applicability of the Coordination Act to the permit program by stating that, in regard to issuance of discharge permits by the Corps, the Department of Interior should be consulted whenever waters are controlled or modified by such permits. 5/

2/ 33 CFR § 209.131.
3/ 33 CFR § 209.131(d)(b).
4/ 33 CFR § 209.131(i).
5/ Ex. Order 11574, issued December 23, 1970.

Rather, the Executive Order stated that Interior shall be consulted "[W]here the discharge for which a permit is sought impounds, directs, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made." (Emphasis added). The Executive Order might be interpreted as leaving an ambiguity as to the applicability of the Coordination Act to various situations. In order to clarify any such ambiguity, the Corps regulations, promulgated pursuant to the Executive Order, reflect the original language of the Coordination Act and not the Executive Order's phraseology.

Section 402 of FWPCA authorizes the Administrator of E.P.A. to issue permits "for the discharge of any pollutant" into "navigable waters" of the United States. The term "pollutant" is broadly defined in section 502(6) to encompass almost any matter or material which may be discharged into water and includes "[D]redged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radio active materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste. . . ." Permits are to be issued only in the event that the various applicable requirements of FWPCA are met. Section 402(a)(1).

Section 402 was intended to transfer to E.P.A. the discharge permit program heretofore established and administered by the Corps of Engineers pursuant to the Refuse Act of 1899. This fact is discussed in the report accompanying S. 2770 (the Senate version of FWPCA prior to conference.) 6/ E.P.A., pursuant to this transfer of authority, is presently drafting regulations implementing the discharge permit program formerly administered by the Corps of Engineers. There appears no reason why the application of the Coordination Act to discharge permits should be altered merely because the administration of such permits has been transferred from one Federal agency to another.

In addition to the fact that section 402 embodies the discharge permits program established under the Refuse Act of 1899, the legislative history of FWPCA independently indicates that the Coordination Act is applicable to permits issued pursuant to section 402.

Both the House and Senate versions of the bill (S. 2770 and H.R. 11896) as introduced and as reported out of the respective Committees on Public Works, included, in section 511(b), a provision which specifically precluded the applicability of the Coordination Act to all but selected sections of FWPCA. The same provisions also clearly indicate that the

6/ S. Rep. 92-414, pp. 69-73 (Committee on Public Works).

Coordination Act is applicable to section 306, portions of section 304 and portions of section 403 of the proposed statute. Section 403 concerns discharge of pollutants into the territorial sea, the waters of the contiguous zone and the oceans. If the Coordination Act is applicable by its own terms to discharge of pollutants into the ocean, as the drafters of section 511(b) of S. 2770 and H.R. 11896 presumed, then it should follow that discharges into any navigable waters are subject to the Coordination Act, since there is no pertinent legal distinction between oceans and navigable waters in connection with Coordination Act applicability. As stated, section 511(b) of H.R. 11896, as introduced and as referred to the House by the committee, precluded applicability of the Coordination Act to all but selected provisions of the bill. However, this section was amended on the floor of the House to delete the limitation on the Coordination Act's applicability. 7/ The Senate did not amend this section.

The effect of the House action, as stated in the debate, was to "[M]ake the Fish and Wildlife Coordination Act applicable in every respect that it applies by its own terms to all sections of the bill." 8/ In conference, the House bill, as amended, prevailed over the Senate version so that the final statute did not contain language limiting the applicability of the Coordination Act. 9/

This record and sequence of events evidences two facts: (1) the original drafters of S. 2770 and H.R. 11896, in seeking to limit the effect of the Coordination Act, considered that the Coordination Act was applicable to the bill and, more particularly, considered that it was applicable to the issuance of discharge permits as seen in the reference to section 403 in the unamended section 511(b), and; (2) by deleting this limitation, the House intended the presumed status quo, i.e., Coordination Act applicability to discharge permits, to remain in effect. There was no necessity to specifically state the Coordination Act's applicability to section 402 of FWPCA, inasmuch as the Coordination Act, by its own terms was considered to be applicable to the issuance of discharge permits under section 402 of FWPCA. It should also be pointed out that section 511(a) of FWPCA states that it "[S]hall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with the Act." This provision leaves Interior's authority intact with regard to implementation of the Coordination Act.

7/ Cong. Rec., March 29, 1972, at H. 2735.
8/ Id.
9/ H.R. Rep. No. 92-1465, 92d Cong., 2nd Sess. (1972), pp. 148-149.

To reiterate, we consider that water is "modified or controlled" by the discharge of pollutants into it and, therefore, E.P.A., when issuing pollutant discharge permits pursuant to section 402(a) of FWPCA, is required by the Coordination Act to consult with Interior in regard to the effect of the proposed discharge on fish and wildlife resources. E.P.A., when drafting regulations to implement the discharge permit program transferred to it from the Corps of Engineers, should consider provisions similiar to those of the Corps' regulations which were applicable to the same matter and which properly reflected the mandates of the Coordination Act.

2. E.P.A.'s Permit Authority Pursuant to Subsections 402(b)-(k) of FWPCA.

The crux of this second legal issue is whether E.P.A.'s broad authority to administer the state's issuance of discharge permits and to review each such state-issued permit pursuant to subsections 402(b)-(k) of FWPCA is tantamount to Federal licensing of such discharge and, therefore, subject to the Coordination Act for the reasons discussed in regard to E.P.A.'s section 402(a) authority. It is noted that the Coordination Act applies to water modification activities conducted by public or private agencies under Federal license or permit. 16 U.S.C. § 662(a).

Section 402(b) of FWPCA establishes a mechanism whereby the states are permitted to issue pollutant discharge permits provided that various conditions are met and provided that each permit, as determined by the Administrator of the E.P.A., complies with the guidelines and requirements of FWFCA. Section 402(d)(2)(B). To make this individual review by E.P.A. of each proposed state permit workable, each state is required by section 402(d)(1) to transmit to the Administrator a copy of each permit application and provide the Administrator with notice of every action related to the consideration of the permit application. FWPCA, therefore, clearly charges E.P.A. with reviewing each application for a pollutant discharge permit issued in the United States to determine that the goals and requirements of FWPCA are met, even though a state may officially issue the permit. Part of E.P.A.'s required review, if it is to accomplish the goal of preserving and protecting fish, shellfish and wildlife, as set forth in section 101(a)(2) of FWPCA, must be concerned with the impact of the proposed pollution discharge under any such permit on fish and wildlife resources. At this stage, our interpretation of the Coordination Act would require that E.P.A.'s review of the proposed permits include consultation with Interior inasmuch as the E.P.A.'s approval of the permit to be issued by the state is tantamount to the granting of Federal permission for the particular discharge.

In addition to this required E.P.A. review of each application being favorably considered by a state, there are additional overriding Federal authorities exercised by E.P.A. with respect to such permits as to warrant the view that the issuance of permits by the states in accord and with the authority contained in FWPCA is a Federal program as well as a program of individual states. In this regard, it should be noted that the standards to be observed are promulgated at the national level (section 402(b)), enforcement is likely to be by the Federal Government (section 309) and, more importantly, each state's authority to administer the program is subject to unilateral determination of non-compliance and revocation by the Administrator (section 402(c)(3)).

That this overriding Federal review over the issuance of permits by the states was intended by Congress is made clear in the committee report on S. 2770, quoted as follows in pertinent part:

> The Federal Government as the custodian of the navigable waters has the responsibility to control affirmatively any discharges of pollutants into the navigable waters and, under the Committee Bill, seeks to achieve elimination of the discharge of pollutants.
>
> It is expected that the States will play a major role in the administration of this program.
>
> The Committee believes that, after a transition period during which the State program and capability will be upgraded, the program should be administered by those States with programs which meet the requirements of this Act.
>
> . . . The administrator would periodically assess the performance of the State program and have the authority to withdraw this delegation upon finding that the State is not carrying out its program properly. 10/ (Emphasis added).

The terms "custodians of the navigable waters," "control affirmatively," "administration" by states and "delegation" to the states, as used above, all evidence the paramount Federal interest, control and responsibility in this aspect of the program.

10/ S. Rep. 92-414, p. 71 (Committee on Public Works).

The licensing authority retained by E.P.A., resting as it does upon E.P.A.'s individual review of each permit application and the statutory relationships described above, is so much a Federal licensing program, in our judgment, as to be subject to the requirements of the Coordination Act to the same extent as are the direct licensing activities of E.P.A. undertaken pursuant to section 402(a) of FWPCA.

The above discussion sets forth the reasons for our view that the requirements of the Coordination Act are applicable to all permits issued pursuant to section 402 of FWPCA. However, the actual subject at issue here is the protection to be afforded fish and wildlife resources in a program which, for a decade at least, may allow pollutants to be discharged into our waterways. The objective of the Coordination Act is to assure that government decision-making or matters affecting our water resources will have the technical information and advice essential to satisfy an appropriate concern for the preservation of fish and wildlife. It is clear that decisions to be made by E.P.A. and the states under section 402 of FWPCA require that fish and wildlife resources be considered. Section 101(a)(2) speaks of a "national goal" of water quality which "[P]rovides for the protection and propagation of fish, shellfish, and wildlife . . ." Section 102(a), in discussing the establishment of comprehensive programs for the reduction of pollutants, requires that "[I]n the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife . . ." A procedure for requesting the Department's views on fish and wildlife concerns, such as was adopted by the Corps of Engineers for the issuance of permits under the Refuse Act, would fulfill the requirements and objectives of both the Coordination Act and FWPCA, and, in addition, would provide a workable administrative framework for the cooperative implementation of the Federal interest in protecting fish and wildlife while considering other appropriate uses of our water resources.

In this regard, Congress has expressed its desire that the various Federal agencies cooperate with each other in environmental matters in the broad mandates contained in the National Environmental Policy Act of 1969 (NEPA). Section 102 of NEPA provides:

> The Congress authorizes and directs that, to the fullest extent possible . . . (2) all agencies of the Federal Government shall - (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment. (42 U.S.C. § 4332 2(c)(A)).

Such a "systematic, interdisciplinary approach" of necessity contemplates close, interagency cooperation regarding matters affecting the environment. In order to fully achieve such an interdisciplinary approach, the particular expertise of each agency of the Federal Government must be brought to bear on a particular problem. For this reason, the expertise of the Bureau of Sport Fisheries and Wildlife in the area of wildlife conservation ought to be coordinated with those of other agencies with particular expertise related to water quality control. The most expeditious and effective means of integrating such expertise is through the consultation procedures of the Coordination Act. We believe this mechanism is entirely consistent with the mandate and objectives of NEPA and the requirements of the Coordination Act and FWPCA.

Sincerely,

Reynold E. Morse

Reynold E. Morse
Solicitor

APR 10 1973

Honorable John D. Dingell
Chairman, Subcommittee on Fish and Wildlife
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Ltr 4/10/73

Dear Mr. Dingell:

This acknowledges receipt of your letter of March 8, 1973, to the Attorney General stating that you understand that the Environmental Protection Agency requested his opinion concerning the relationship of the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) to that Agency's permit program under § 401 of Pub. L. 92-500 (80 Stat. 816). Before rendering such opinion you ask that the Attorney General obtain the opinions of the Department of the Interior and NOAA. You also request an opportunity to study the opinions of the three agencies, and to comment or hold a hearing thereon.

EPA has requested the Office of Legal Counsel, as distinguished from the Attorney General, to render an opinion as to the relationship of the Coordination Act to that agency's permit program under § 402 of Pub. L. 92-500. We understand informally from Mr. Howard of your staff that you already have copies of the respective opinions of the General Counsel of EPA and the Deputy Solicitor of the Department of the Interior. We expect to receive in the next few days the opinion of the General Counsel of NOAA, and understand informally that he will also send you a copy.

A staff member in my Office has already informally told Mr. Howard of your office that EPA has told us that it wishes to have our opinion as soon as possible. Consequently, we suggest that your staff advise us in the next few days as to whether you have any comments on the opinions of the three agencies, and if so whether you will send them to us. In response to Mr. Howard's informal inquiry, he was also advised that we doubted that EPA would agree to have us postpone

rendition of the requested opinion until the end of this month. In these circumstances, I do not believe that we are in position to postpone rendition of our opinion pending possible hearing.

I regret very much the delay in answering your letter. Mr. Howard has already been informed that it was first routed elsewhere in the Department, and only reached us a few days ago.

Sincerely,

/s/

Robert G. Dixon, Jr.
Assistant Attorney General
Office of Legal Counsel

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U.S. House of Representatives
Committee on
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April 11, 1973

Honorable Richard G. Kleindienst
Attorney General of the United States
Department of Justice
Washington, D. C. 20530

Dear Mr. Kleindienst:

On March 8, I wrote to you requesting that your Department defer issuing an Attorney General's opinion which the Environmental Protection Agency and the Interior Department requested earlier this year concerning the relationship of the Fish and Wildlife Coordination Act to the permit program of the Environmental Protection Agency under Public Law 92-500 until our Subcommittee had an opportunity:

(a) to study the opinions supplied by EPA, by the Interior Department, and by the National Oceanic and Atmospheric Administration; and

(b) to express our views and/or hold a hearing on the issue.

At that time, we had not yet received any of these opinions. In fact, we did not receive EPA's and Interior's opinions until a few days ago, and we have yet to receive NOAA's.

More than a month has passed, but we received no response from your Department until today, when we received Assistant Attorney General Robert G. Dixon, Jr.'s letter dated April 10.

Mr. Dixon informed us that "EPA has requested the Office of Legal Counsel, as distinguished from the Attorney General, to render an opinion" on this matter. (Underlining supplied.) He said that he expects to receive NOAA's opinion "in the next few days." Finally, he said that EPA is pressing for an opinion "as soon as possible" and he "doubted" that "EPA would agree to have us postpone rendition" of the opinion until the "end of this month" or until our Subcommittee holds a hearing on the matter.

Sections 511 and 512 of title 28 of the United States Code direct the Attorney General to "give advice and opinion on questions of law when required by the President," and authorize the "head of an executive department" to "require the opinion of the Attorney General on questions of law arising in the administration of his department," respectively. I find nothing in these sections which authorize any agency to request an opinion of the "Office of Legal Counsel, as distinguished" from one of the Attorney General, or which provides a statutory basis for such an opinion, once rendered by that office. Indeed, I doubt that such a basis exists. The statute providing for appointment of Assistant Attorneys General (5 USC 506) does not prescribe any duty to one or more of them to issue such opinions from this "Office." In fact, I can find no reference in title 28 of the Code of any statute even establishing this "office," let alone providing that it shall issue such opinions.

I cannot understand why EPA and Interior would want to go through this charade of requesting an opinion from this "Office" rather than from the Attorney General who is charged by Congress with responsibility for such opinions. EPA's Assistant Administrator, Mr. Quarles, in a March 21 letter to us, explained that one reason for resolving this matter was to avoid the possibility of a polluter or a citizen suing EPA for failing to "consult" with the Fish and Wildlife Service or NOAA as "required" by the Coordination Act. Apparently, he believes that a Justice Department opinion of any kind, which advised that the Coordination Act did not apply to EPA's permit program, would discourage such a suit.

I fail to see how an opinion from the Office of Legal Counsel would avoid the "possibility" of such a suit, since such an opinion, "as distinguished" from an Attorney General's opinion, lacks any statutory standing and is merely the view of that office. It is not binding on EPA, Interior, NOAA, the applicant for an EPA permit, or the public. Moreover, since such an opinion lacks the stature of an Attorney General's opinion, I think that a court would give it even less weight than an opinion of the Attorney or Counsel of a program agency, if the opinion is challenged by any polluter or a citizen.

If EPA desires to have from your Department an opinion which has a proper statutory foundation, it should request, in the customary manner, an opinion of the Attorney General, not an opinion of "the Office of Legal Counsel, as distinguished from the Attorney General."

If I am correct that there is no specific statutory basis for opinions of this "Office," please explain to me (a) why such opinions are issued, (b) why Justice apparently encourage agencies to ask for them rather than the Attorney General's opinions, and (c) what purpose such opinions serve.

Our staff has reviewed the EPA and Interior opinions and found that both treat too lightly some significant legislative and other history concerning this matter. Moreover, we find EPA's contentions to be based more on its desire to avoid any entanglements with other Federal programs because of some ill-defined fear of delay in issuing permits, rather than on the law, legislative history, and the facts.

I have indicated that we would comment on the matter quite promptly after receiving all of the opinions, including NOAA's. Since our Subcommittee has jurisdiction over, and considerable experience with, the Coordination Act, I think our views and comments should not be ignored by the Department of Justice.

I again request that no opinion be issued by the Department of Justice on this matter until we have a meaningful opportunity to review all the opinions and express our views in writing to you. Once the opinion is issued, it is likely that we will want you to testify at hearings by our Subcommittee on this important matter.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment

cc:

Robert G. Dixon, Jr.
Assistant Attorney General

William D. Ruckelshaus
Administrator, EPA

Dr. Robert M. White - NOAA

John Whitaker
Acting Secretary - Interior

Hon. Henry S. Reuss
Chairman, Conservation & Natural
Resources Subcommittee

Hon. Guy Vander Jagt
Ranking Minority Member, Conservation &
Natural Resources Subcommittee

Dave Ramage -
349 B

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

APR 26 1973

Honorable John D. Dingell
Chairman, Subcommittee on Fisheries and
Wildlife Conservation and the Environment
Committee on Merchant Marine and Fisheries
House of Representatives
Room 1334, Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Dingell:

In your letter of April 11, 1973, to the Attorney General regarding the question of the authority of the Environmental Protection Agency to issue pollutant discharge permits without formal consultation with certain other agencies, you renew your earlier request that no opinion be issued by the Department of Justice in this matter until your Subcommittee has expressed its views in writing.

As you know, EPA has been pressing for some time for a prompt resolution of this matter because it has applications backed up in its pipelines in its regional offices. The Interior Department, the Commerce Department, and EPA have somewhat conflicting views of the provisions of the Federal Water Pollution Control Act and the Fish and Wildlife Coordination Act in relation to EPA's permit program. The Office of Legal Counsel was asked by EPA to resolve the conflict.

The rendition of legal opinions by the Department of Justice or its authorized components such as the Office of Legal Counsel is an Executive function performed for the benefit of agencies in the Executive branch of the Government, and does not ordinarily necessitate consultation with the Legislative branch. However, in view of your Subcommittee's expressed interest, and despite strong pleas from EPA for immediate action on the ground that the matter is already overdue for resolution, and is impeding the water pollution control program, we are glad to provide the Subcommittee with

an opportunity to furnish us with its comments if it does so promptly.

You have also raised a question concerning the role of the Office of Legal Counsel in this matter, in response to EPA's request to that Office for an informal expression of views. An order issued by the Attorney General provides that the Office of Legal Counsel, subject to the general supervision and direction of the Attorney General, shall prepare the formal opinions of the Attorney General and render informal opinions and legal advice to the various Executive agencies of the Government. See 28 C.F.R. 0.25 (rev. Jan. 1, 1972); see also U.S. Government Organization Manual 1972/73, p. 276.

Under the provisions of 28 U.S.C. 512 the respective heads of Executive departments are authorized to request an opinion by the Attorney General on legal questions. If an agency like EPA, which is not in one of the Executive departments enumerated in 5 U.S.C. 101, wishes to obtain a formal opinion from the Attorney General, it must ask the President to request the opinion as provided in 28 U.S.C. 511. This has not been done.

Because the EPA program has already been delayed, we request that the Subcommittee's views be transmitted to us not later than May 4, 1973. We should appreciate a telephone call from you or a member of your staff as to whether we may expect to receive those views by that time.

Sincerely,

Joseph T. Sneed
Deputy Attorney General

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 7 1973

OFFICE OF THE
ADMINISTRATOR

Honorable John D. Dingell
Chairman, Subcommittee on Fisheries
and Wildlife Conservation and
the Environment
Committee on Merchant Marine and
Fisheries
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your letter of April 11, inquiring why EPA and the Department of the Interior requested an opinion on the applicability of the Fish and Wildlife Coordination Act from the Office of Legal Counsel, as distinguished from the Attorney General.

The primary concern of EPA in this matter is to proceed as quickly as possible with abatement of water pollution through the issuance of permits under Section 402 of the Federal Water Pollution Control Act. In this connection, we required some mechanism for resolution of the disagreement between the Department of the Interior and EPA concerning the applicability of the Fish and Wildlife Coordination Act to permits under the FWPCA. We sought an opinion from the Office of Legal Counsel, rather than from the Attorney General, primarily in order to avoid the additional delays which are entailed in obtaining an opinion of the Attorney General.

We are aware that an opinion of the Office of Legal Counsel, or, indeed, of the Attorney General, would not be binding upon a court of law. However, since the agencies involved have agreed to abide by the opinion of the Office of Legal Counsel in this matter, such an opinion will enable us to move ahead with the task of cleaning up the Nation's waters. That is all that we seek.

Should a court of law conclude that our view of the applicability of the Fish and Wildlife Coordination Act is incorrect, we will of course modify our regulations accordingly. We doubt, however, that there will be any occasion for litigation of this matter, since our procedures for issuance of permits afford ample opportunity for comment by the Department of the Interior and NOAA, and since our Regional Administrators are authorized to establish conditions to protect fish and wildlife resources.

We believe that the permit program under the Federal Water Pollution Control Act is of crucial importance to attaining improvement in water quality. We earnestly solicit your support in this endeavor.

Sincerely yours,

/s/ Robert W. Fri

Robert W. Fri
Acting Administrator

ENVIRONMENTAL
DEFENSE
FUND

162 OLD TOWN ROAD, EAST SETAUKET, N.Y. 11733/516 751-5191

April 25, 1973

Honorable Richard G. Kleindienst
Attorney General
United States Department of Justice
Washington, D. C. 20530

Re: Applicability of the Fish and Wildlife Coordination Act 16 U.S.C. §§661, et seq. to Permits Issued Pursuant to §402 of the Federal Water Pollution Control Act

Dear Mr. Kleindienst:

The foregoing topic has been the subject of several memoranda from the various agencies involved, including a memorandum dated March 9, 1973, from the Deputy Solicitor to the Secretary of the Interior, forwarded to the Honorable Robert G. Dixon, Office of Legal Counsel, and a memorandum dated February 14, 1973, from the Office of the General Counsel of the Environmental Protection Agency forwarded to the Honorable Roger Cramton of the Office of Legal Counsel by letter dated February 16, 1973.

After perusing these documents and making further study of the issue, we wish to express to you our view that the position of the Department of the Interior is correct, primarily for the reasons set forth in the memorandum of the Solicitor.

As a preliminary matter, however, I wish to make inquiry as to why these issues were addressed to the Office of Legal Counsel, rather than directly to your office in the light of the explicit authority of your office in 28 U.S.C. §§511 and 512. It would appear further that it would be your office that would decide to which official within the Department of Justice would be delegated the responsibility of responding, in accordance with 28 U.S.C. §510.

To briefly reiterate the points made by the Solicitor of the Interior, prior administrative interpretation of the Coordination Act by the Corps of Engineers under the Refuse Act of 1899, 33 U.S.C. §407 is strong precedent in favor of the opinion of the Solicitor. See 33 C.F.R. §209.131, the relevant language of

which is set out at page 3 of the Solicitor's memorandum. It would be anomalous indeed if the enactment of the 1972 Amendments to the Federal Water Pollution Control Act (FWPCA) should be used as a point of departure for altering this interpretation of the Coordination Act, particularly in the light of the efforts made by Congress to delete any provision of those amendments designed to reduce the applicability of the Coordination Act to the permit program.

Finally, as a policy matter, there is every reason to continue the requirement of formal consultation with the Department of the Interior whose agencies have the relevant expertise to assure adequate consideration of fish and wildlife values. The Coordination Act places an obligation on the Department of the Interior officials to respond; a mere notice by EPA, as it now proposes, would not necessarily compel the same attention or receive the same priority as a request for coordination under the Coordination Act. In the light of the language of the Coordination Act, reasonably consistent with its applicability to the permit program, its prior administrative interpretation by the Corps of Engineers to the analogous permit program under the Refuse Act, and the present desire of Congress to continue that prior interpretation under the 1972 Amendments, the opinion of the Solicitor of the Interior is correct and should be adopted.

I wish to thank you for the opportunity to present our views on this important question.

Sincerely yours,

Edward Lee Rogers

Edward Lee Rogers
General Counsel

cc: Honorable John D. Dingell
Honorable Henry S. Reuss
Honorable Guy Vander Jagt

ELR/mlr

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

May 9, 1973

Honorable Joseph T. Sneed
Deputy Attorney General
United States Department of Justice
Washington, D. C. 20530

Dear Mr. Sneed:

Thank you for your April 26, 1973 letter allowing our Subcommittee to express our views on the Environmental Protection Agency's contention that the Fish and Wildlife Coordination Act (16 U.S. Code 661, et. seq.) is not applicable to all permits issued under section 402 of the Federal Water Pollution Control Act (Public Law 92-500). This contention is set forth in the February 14 memorandum by EPA's Associate General Counsel, Mr. Robert V. Zener; in a February 16 letter to your Department from EPA's General Counsel, Mr. John R. Quarles, Jr., requesting an "informal" opinion from your Office of Legal Counsel on this matter; and in the March 21 letter from EPA's General Counsel to us.

The dispute arises because on January 11, 1973, EPA published for public comment thereon its proposed regulations (38 F.R. 1362) to provide for the issuance of EPA permits authorizing the discharge of pollutants into navigable waters pursuant to section 402 of Public Law 92-500. That section, according to the report of the House-Senate Conferees (H. Rept. 92-1465; Sept. 28, 1972; p. 138), "transfers the 1899 Refuse Act permit program from the Corps of Engineers to the Administrator" of EPA. Section 125.14(f) of the proposed regulations provides:

> "(f) Whenever the provisions of the Fish and Wildlife Coordination Act...apply, Regional Administrators shall consult with appropriate officials of the U.S. Department of the Interior and the U.S. Department of Commerce, and with the head of the agency exercising administration over the wildlife resources of the State in which the discharge will occur."

The foregoing provision implies that the Coordination Act may not apply to some EPA-issued permits under section 402 of the Act. Furthermore, it leaves it to EPA's Regional Administrators to make this determination.

The dispute also arises from the fact that EPA's guidelines of December 22, 1972 (37 F.R. 28390) concerning permits issued by the States pursuant to section 402 of Public Law 92-500 are silent on the question of whether or not the Coordination Act applies to such State-issued permits.

EPA's February 16 letter concludes:

> "In my opinion, the requirement in the Fish and Wildlife Coordination Act for consultation with the Department of the Interior applies to Federal permit issuance under section 402 of the FWPCA only in those cases where the permitted discharge could accumulate and block a watercourse, or where the discharge is of such high velocity that it would result in a dredging or gouging out of a streambed. Additionally, it is my opinion that the consultation requirement of the Fish and Wildlife Coordination Act has no applicability to issuance of permits by the various States under State permit programs approved by the Administrator pursuant to section 402(b) of the FWPCA." (Underlining supplied.)

However, the Interior Department, in a March 9 memorandum by its Deputy Solicitor, Mr. Raymond Coulter, and the Commerce Department's General Counsel, Mr. William Letson, in an April 17 letter to your Department, expressed disagreement with the above contention. The Environmental Defense Fund, in an April 25, 1973 letter to the Justice Department, concluded "that the position of the Department of the Interior is correct."

I. THE ADMINISTRATION'S ACTION IN SEEKING TO WEAKEN AND, IN EFFECT, SCUTTLE THE FISH AND WILDLIFE COORDINATION ACT IS INCONSISTENT WITH THE PURPOSE OF CONGRESS AND THE NATIONAL ENVIRONMENTAL POLICY ACT.

Since 1934, the Fish and Wildlife Coordination Act has been broadly attacked by developers, dredgers, and others who assign a low priority to fish and wildlife. Indeed, in 1958 when the law was last overhauled, some interests stressed protection of wildlife if consistent with development. For example, the

American Pulpwood Association, in a July 8, 1958 letter to the House Merchant Marine and Fisheries Committee, said (Hearings, Coordination Act Amendments (June 27, 1958), p. 44):1/

> "The competitive demands for land and water in our rapidly expanding economy will no longer permit the development of fish and wildlife resources being given priority over the development of other resources, although we agree that fish and wildlife resources should be protected and enhanced whenever this will be consistent with well-balanced, multiple use development."

But due to the tenacity of Congress, the U.S. Fish and Wildlife Service, environmentally concerned citizens, and the courts, such attacks have always been beaten back. The public interest in protecting and enhancing this valuable resource has prevailed.

Today the law is faced with a new attack, not by its traditional opponents, but by the bureaucracy in EPA that seeks to weaken and scuttle this law under the guise of "abating water pollution." I think EPA's attack is not only deplorable, but also inconsistent with the directive of section 102(1) of the National Environmental Policy Act of 1969 (42 U.S. Code 4332(1)) which states that "the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in" NEPA. EPA's interpretation of the Coordination Act does violence to that congressional directive.

II. EACH AMENDMENT TO THE COORDINATION ACT WAS DESIGNED TO BROADEN THE SCOPE OF THE LAW, NOT RESTRICT IT.

On March 10, 1934, the 73rd Congress enacted the first version of today's Coordination Act for the purpose of promoting "the conservation of wild life, fish and game" (48 Stat. 401). Section 3(b) of the 1934 Act provided:

> "...whenever any dam is authorized to be constructed, either by the Federal Government itself or by any private agency under Government permit, the Bureau of Fisheries shall be consulted..."

Thus, the first statute clearly required consultation with the then Bureau of Fisheries only when a "dam is authorized to be constructed."

1/ The Interior Deputy Solicitor's memorandum of Mar. 9, 1973 erroneously states (in footnote 1) that there was "no floor debate on the measure and no recorded hearing" concerning the 1958 Coordination Act Amendments. There were both recorded hearings and a brief floor debate.

Later, on August 14, 1946, the earlier law was repealed and a new law enacted by the 79th Congress (60 Stat. 1080). Section 2 of the 1946 law provided:

> "Whenever the waters of any stream or other body of water are authorized to be impounded, diverted, or otherwise controlled for any purpose whatever by any department or agency of the United States, or by any public or private agency under Federal permit, such department or agency first shall consult with the Fish and Wildlife Service and the head of the agency exercising administration over the wildlife resources of the State wherein the impoundment, diversion, or other control facility is to be constructed with a view to preventing loss of and damage to wildlife resources, and the reports and recommendations of the Secretary of the Interior and of the head of the agency exercising administration over the wildlife resources of the State, based on surveys and investigations conducted by the Fish and Wildlife Service and by the said head of the agency exercising administration over the wildlife resources of the State, for the purpose of determining the possible damage to wildlife resources and of the means and measures that should be adopted to prevent loss of and damage to wildlife resources, shall be made an integral part of any report submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects."2/
>
> (Underlining supplied.)

Congress thus expanded the scope of the Act to insure that more than just dams or impoundments would be subject to the consultation provisions of the law. The House Committee on Agriculture, in its report on the bill (H.R. 6097) which was finally enacted, said (H. Rept. No. 1944, 79th Cong., 2nd Sess., April 17, 1946, p. 1):

> "The proposed bill would place in effect a much-needed program and facilities for the effectual planning, maintenance, and coordination of wildlife conservation, management, and rehabilitation. Although such a program was contemplated by the Act of March 10, 1934 (48 Stat. 401), that legislation has proved to be inadequate in many respects and it now is proposed that it be amended to provide for more adequate procedures."

2/ In adopting the 1946 amendments, Congress also provided in sec. 5 that the Fish and Wildlife Service should investigate the effects of sewage and industrial wastes on fish and wildlife. This function remains in effect today. (16 U.S. Code 665).

In 1958, Congress revisited the law and amended it, including section 2 of the 1946 statute, because Congress found that the results under the 1946 law "have fallen far short of the results anticipated by the conservationists who sponsored the 1946 law" (S. Rept. 85-1981; July 28, 1958, p. 4). The objective this time, just as in 1946, was to broaden the scope of the law. Section 2(a), therefore, was amended to read as follows:

> "Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development." (Underlining supplied.)

EPA's Associate General Counsel contends that:

> "It is clear that the intent of this section is to require such consultation only by Federal agencies with responsibility over water resource projects in which actual dredging, filling, stream channelization, or other direct modification of water courses is carried out.
>
> * * * * *
>
> "The plain language of the statute applies only to 'water resource development'..." (Underlining supplied.)

Both of these contentions smack of off-the-cuff comments based on a hip-pocket analysis of the statute.

First, EPA makes no effort to support its assertion concerning the "intent" of section 2 of the Coordination Act, and there is no shred of evidence to support it.

Second, EPA's assertion about the "plain language" of the law is totally indefensible. EPA grasps the term "water resource development" at the end of section 2(a) of the 1958 amendment and distorts it into a limitation on the scope of the section to include such diverse activities as dredging, filling, channelization and impoundments, but nothing else.

However, Congress did not define the term "water resource development." Nor is it a term which means what EPA said it means. Indeed, Congress did not use the term as a term of art. This is shown by the fact that in section 2(c) of the Act, Congress used a different term ("water-control projects") instead of "water resource development" to convey a similar meaning. Surely, the Corps of Engineers and the Bureau of Reclamation would not interpret "water-control projects" any differently than they would the term "water-resource development."

Furthermore, the legislative history shows that the term "water-resource development" does not have the precision EPA ascribes to it.

The 1958 Act got its start when the International Association of Game, Fish, and Conservation Commissioners adopted a resolution in 1956 urging the U.S. Fish and Wildlife Service and the Interior Department to prepare legislation "to strengthen...[the Coordination Act] and to bring the conservation of fish and wildlife resources to full equal partnership with water control for other purposes such as irrigation, flood control, hydroelectric power, and navigation" (Hearings, supra, p. 12). At the June 28, 1958 hearings on the Coordination Act Amendments, Interior's then Under Secretary, Mr. Hatfield Chilson, testified (Hearings, supra, p. 12) that "the Department of the Interior prepared such a draft bill and submitted it for review and comment to the Governor of each State in January 1957. H.R. 8631 is identical to the draft prepared by our Department."

In its report (H. Rept. 85-1185; Aug. 16, 1957) entitled "Army-Interior Reservoir Land Acquisition Policy," the House Committee on Government Operations stated (pp. 31 - 32):

> "The committee believes that the public interest in wise conservation of our national fish and wildlife resources requires...the strengthening of the Coordination Act. The committee is gratified that a draft of amendments to the Coordination Act prepared by the Interior Department has been endorsed by all 48 States and has already been introduced in the 85th Congress by Congressman Henry S. Reuss of Wisconsin (H.R. 8747) and Congressman Lee Metcalf of Montana (H.R. 8631). These amendments would permit the Fish and Wildlife Service to accept donations of land and funds; would broaden its authority to consult with respect to proposed as well as authorized projects and also those receiving Federal financial or technical assistance; would provide for the development and improvement of wildlife resources, as well as mitigation of losses thereof; would authorize acquisition of lands for such purposes by Federal construction agencies; and would make other important improvements in the Coordination Act.

> The committee believes the basic objectives of these amendments are in the public interest and recommends their favorable consideration by the legislative committees of Congress which will deal with them."

Following the solicitation of State views on the draft bill, Interior prepared a new draft which was introduced as H.R. 12371. This bill was identical to H.R. 13138 which was finally enacted in 1958 by Congress.3/

Interior's draft, H.R. 12371, like the present Act, contained both the term "water-resource development", and the term "water-control projects." It appears that Interior used these terms interchangeably. There is nothing in the hearings on the legislation or the Committee reports to support the contention that Interior, as drafters of the legislation, intended either term as a limiting one, as EPA suggests.

On the contrary, the Department, pursuant to my request to Under Secretary Chilson, prepared a section-by-section analysis. That analysis (Hearings, supra, pp. 25 - 26) confirmed that the amendments to section 2 were intended to:

> "Broaden the range of water activities to which the act would apply; spell out clearly the authority to provide for the improvement and enhancement of fish and wildlife resources as well as mitigation of damages to those resources; make the act applicable to projects already authorized; establish specific procedures for the reporting on water-use projects by construction agencies and fish and wildlife agencies; and provide that more orderly consideration be given by construction agencies to conservation recommendations." (Underlining supplied.)

It is thus evident that the 1958 Amendments were broadly conceived for the purpose of protecting fish and wildlife values. The requirement that the licensing or permitting agency "consult" with fish and wildlife agencies whenever "a stream or other body of water" is "modified for any purpose whatever"

3/ At the hearing, there was the following colloquy between Cong. Miller and Secretary Chilson (Hearings, supra, pp. 18 - 19):

"Mr. Miller: It is generally a courtesy that you pass out a bill of the Chairman of the subcommittee and that you pass out a bill of a member of the committee rather than that of a non-member of the committee. At the proper time I am going to move the adoption of H.R. 13138.

"I want the record to show that we are not trying to cross you up."

"Mr. Chilson: We want the record to show that our remarks go to H.R. 13138, it being identical to H.R. 12371."

NOTE: H.R. 13138 was introduced by the Subcommittee Chairman, Congressman Frank W. Boykin.

was phrased equally broadly to apply to any kind of modification, including the modification of water quality resulting from discharges of industrial and municipal wastes, that would or might adversely affect fish and wildlife values. As I will show below, those who administered this Act for over a dozen years since this amendment adhered to this purpose.

Absent a clear statutory provision limiting the scope of the law, I think there is no basis for EPA to manufacture one, particularly since the Coordination Act must be viewed in a manner which will help effectuate the "policies" of the National Environmental Policy Act of 1969.

III. WHEN CONGRESS CONSIDERED THE 1958 COORDINATION ACT AMENDMENTS, THE CORPS OF ENGINEERS WAS ISSUING PERMITS WHICH COVERED DISCHARGES OF REFUSE INTO NAVIGABLE WATERS.

In March, 1970, the House Committee on Government Operations, in a report (H. Rept. 91-917) entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution," said (pp. 14-15):

> "Section 13 of the River and Harbor Act of 1988 (30 Stat. 1151, 33 U.S.C. 407), although enacted nearly three quarters of a century ago, constitutes a potentially powerful, but only sporadically used, weapon for combatting the pollution of our Nation's navigable waters."

This report set off a series of events that revolutionized and streamlined the Federal Government's anti-pollution effort, including the announcement by the Corps of Engineers in July 1970 that -- 70 years after enactment of the 1899 law -- it would establish a formal Refuse Act permit program.

However, the Corps had for many years issued permits which authorized the discharge of industrial and other wastes into navigable waters. This is disclosed in two lists prepared at the request of the House Conservation and Natural Resources Subcommittee shortly before March 1970. One list (Table A) showed "existing" permits issued since 1899 by the Corps "to any person for the purpose of discharging INDUSTRIAL WASTES into navigable waters within or bordering any state." The other (Table B) showed existing permits issued since 1965 by the Corps "to any person for the purpose of discharging DREDGED MATERIAL into navigable waters."4/ When the tables were completed in June 1970, they showed that although no permits existed in 22 States covering discharges of industrial wastes, there were a number of such permits in other States. These

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4/ The tables are printed in full in the Hearings of the Subcommittee on Energy, Natural Resources and the Environment of the Senate Committee on Commerce, entitled "Effects of Mercury on Man and the Environment," Part 2, Table A at p. 133; Table B at p. 246.

tables cited either section 10 or both sections 10 and 13 of the River and Harbor Act of 1899, and included a number of permits issued after 1958. Several of these permits also pre-date the 1958 amendments to the Coordination Act, such as one issued in 1954 to the DuPont Company in Delaware for the discharge of chemicals. They covered discharges of all types of refuse such as pulp and paper, synthetic fibers, chemicals, petroleum products, toxic wastes, heated water, sanitary sewage, and sulphite liquor.

Thus, the Corps, at least until recently, made no distinction in its permit system between activities authorized under section 10 of the 1899 law and those authorized under section 13 of that law. This was true both in 1970 and in 1958 when Congress amended the Coordination Act. The deficiencies in the Corps program that were criticized by the Government Operations Subcommittee in 1970 were its failures to enforce the Refuse Act vigorously against industrial polluters, and to establish a nationwide permit program to control these wastes under the Refuse Act in all States.

IV. EVER SINCE THE ENACTMENT OF THE 1958 AMENDMENTS TO THE COORDINATION ACT THE CORPS CONSTRUED IT AS BEING APPLICABLE TO PERMITS ISSUED UNDER THE RIVER AND HARBOR ACT OF 1899, INCLUDING THOSE COVERING WASTE DISCHARGES.

On September 30, 1959, the Corps issued a Manual (EM 1165-2-104) prescribing the "policies for the consideration and inclusion of fish and wildlife conservation" in matters under the Corps' jurisdiction. Section 4(b) of that manual specified that the Coordination Act is "applicable to permit applications involving impoundments, diversion, dredging, filling, or other work in navigable waters affecting fish and wildlife conservation." (Underlining supplied.)

On May 8, 1970, the Corps' Assistant General Counsel, Mr. J. J. Lankhorst, testified before a Senate subcommittee that the Coordination Act applies to discharge permits issued by the Corps under the 1899 Act. He said:

> "At first the Refuse Act was enforced with a view only toward the effect a deposit or discharge would have on the navigable capacity of a waterway. Later the Refuse Act was used to supplement the Oil Pollution Act of 1924 so as to control oil discharges from shore facilities and discharges into nontidal waters, two situations not covered by the Oil Pollution Act of 1924. Following enactment of the Fish and Wildlife Coordination Act of 1958, consideration of permit applications was broadened to include the effects of any proposed discharge on fish and wildlife. As water pollution became a matter of increasing awareness, the

public interest in water quality also became a significant factor in evaluating permit applications. Today, the regulations of the Corps of Engineers require specific evaluation of the effects of a proposed discharge on navigation, fish and wildlife, water quality, conservation, esthetics, ecology, and other environmental factors." 5/ (Underlining supplied.)

Thus, for over 15 years, the Corps treated the permits it issued under sections 10 and 13 of the 1899 Act as covering polluting refuse from industrial outfalls, as well as dredged and fill material, and construed the Coordination Act to apply to these permit applications.

EPA's Associate General Counsel gives no recognition to this long adopted administrative construction. Instead, he seems to contend that, in effect, the Corps acted erroneously all these years because, he states, the "plain language" of the Coordination Act "applies only to 'water resource development' and not to discharge permits under the Refuse Act of 1899." I think that such a conclusion is unwarranted.

The language of the Coordination Act is not "plain" on this matter. As we have previously shown, there is nothing in the statute or the legislative history thereof to support the contention that the term "water resource development" was intended as limitation on the scope of the Act. The operative words of section 2(a) are "whenever...the stream or other body of water [are proposed or authorized to be] otherwise...modified for any purpose whatever... by any public or private agency under Federal permit or license." These are not words of limitation. Absent clear legislative history and past administrative practice showing that they have been viewed narrowly, there is no basis for applying a narrow construction today merely to accommodate EPA's desire to operate its permit program free of the Corrdination Act's consultation requirement.

V. IN DECEMBER 1970, THE CORPS PUBLISHED, PURUSANT TO EXECUTIVE ORDER 11574, PROPOSED REGULATIONS TO IMPLEMENT A NATIONWIDE REFUSE ACT PERMIT PROGRAM. THE EXECUTIVE ORDER, AND LATER THE CORPS' PROPOSED REGULATIONS, ERRONEOUSLY PARAPHRASED THE COORDINATION ACT SO AS TO LIMIT ITS APPLICATION IN REGARD TO REFUSE DISCHARGES. EPA NOW SEEKS TO RESURRECT THAT DISCREDITED INTERPRETATION OF THE COORDINATION ACT.

5/ Mr. Lankhorst's prepared statement is printed at pp. 172, 173 of the Hearing of the Subcommittee on Conservation and Natural Resources of the House Committee on Government Operations, entitled: "The Establishment of A National Industrial Wastes Inventory", Sept. 13, 1970.

On July 30, 1970, the Corps announced new permit requirements under the Refuse Act of 1899 (33 U.S. Code 407) "concerning all discharges into navigable waters."6/ The announcement provided that no longer would such discharges be covered under section 10 of the 1899 Act. To discharge, polluters would be required to obtain a permit specifically under section 13 (the Refuse Act).

The Corps, however, delayed issuance of implementing regulations until after the President issued Executive Order 11574 on December 23, 1970 (35 F.R. 19627).

Section 2(a)(3) of the Executive Order directed the Secretary of the Army to consult with the Interior and Commerce Departments "regarding effects on fish and wildlife which are not reflected in water quality considerations, where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made." (Underlining supplied.) The Corps proposed regulations, issued a few days later, contained a similar statement.

In a December 23, 1970 letter to the Corps, the House Subcommittee on Conservation and Natural Resources called to the Corps' attention the above quoted statement and called it an "inaccurate paraphrase" of section 2(a) of the Coordination Act. The Subcommittee noted that the word "similarly" (underlined above) does not appear in the statute.

In his January 19, 1971 reply, the then General Counsel of the Army, Mr. Robert E. Jordan, III, said: 7/

> "In view of the legislative history of the Act and, indeed, the language of section 2(a) of the Act (16 U.S.C. 662(a)), there is considerable doubt that the Act was intended to apply to a discharge from a private facility which does not impound, divert, deepen the channel, or otherwise control or similarly modify the stream or body of water into which the discharge is made. This view was reflected in the drafting of section 2(B)(3) of Executive Order 11574...The Corps' regulations are worded as they are to conform with this section of Executive Order 11574."

6/ Hearings, "Mercury Pollution and Enforcement of the Refuse Act of 1899," Part 1, p. 462.

7/ Mercury Hearings, supra, p. 524, 528-529.

It seemed very strange that, after a dozen years of applying a different interpretation of the law, the Corps would suddenly dream up a new interpretation. Therefore, both Congressman Reuss' Subcommittee and mine sent separate letters to the Council on Environmental Quality on February 4, 1971, concerning this unfortunate and detrimental interpretation of the Coordination Act.

The Conservation and Natural Resources Subcommittee, in a letter signed by Chairman Reuss and Ranking Minority Member Vander Jagt, said:

> "Although the foregoing quoted language purports to state section 2 of the Fish and Wildlife Coordination Act (16 U.S. Code 662), as amended by the National Environmental Policy Act of 1969 (Public Law 91-190), it inaccurately paraphrases that section. The underlined clauses of the quoted language improperly limit the scope of the Coordination Act, and thus amend it by administrative rather than legislative action.
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> "If not corrected, these amendments will have disastrous consequences to the environment. Further, they will reduce substantially the public benefits we all expect will flow from the new 1899 permit program.
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> "The Act clearly applies to both (a) permits which authorize impoundments, diversions, or channel deepening of a waterway, and (b) permits which authorize activities resulting in a waterway being 'otherwise controlled or modified.' The Act does not contain the limiting word 'similarly' (referring back to impoundments, etc.) before the word 'modified.' Yet the Executive Order does contain that limiting word and thus amends the statute without authority from Congress.
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> "The statute is plain. It needs no interpretation--certainly, not one that would limit its application only to Federal permits and licenses which authorize a facility which impounds, diverts, or deepens a channel or involves some other construction activity in a navigable waterway.
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> * * * * *
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> "We are unaware of any basis in the Coordination Act or its legislative history for this 'doubt' that Mr. Jordan speaks of. To our knowledge, no other Federal agency has raised this doubt. Certainly, the Interior Department which administers the Coordination Act has not told Congress that this 'doubt' exists.

"Why then should the Corps, whose sole responsibility under the Act is to 'consult' with the U.S. Fish and Wildlife Service and the State fish and game agencies and to consider the recommendations of those agencies, cloud this important environmental statute with this 'doubt?' Congress, in section 102(1) of the National Environmental Policy Act of 1969, directed that the 'public laws of the United States shall be interpreted' by all Federal agencies and 'administered in accordance with the policies set forth in this Act.' The Corps' narrow interpretation, based merely on a 'doubt' of the Coordination Act, hardly conforms to this mandate of Congress.

"It was the Corps that also had a 'doubt' that the 1899 Refuse Act prohibited the discharge or deposit of refuse material into a waterway from industrial polluters unless that discharge or deposit impeded or obstructed navigation too. But the Corps finally resolved its 'doubt' in favor of a broader view of the 1899 law espoused by the Court of Appeals in Zabel v. Tabb, 430 F. 2d 199 (1970) by this subcommittee, and by the President in ordering establishment of the Refuse Act permit program."8/

The Fisheries and Wildlife Subcommittee, in a letter which I signed, said:

"Thus, the Coordination Act applies to both (a) permits which authorize impoundments, diversions, or channel deepening of a waterway, and (b) permits which authorize activities resulting in a waterway being 'otherwise controlled or modified'. Unfortunately, the Executive Order might be considered to introduce a limitation on the application of the Coordination Act by using the word 'similarly' immediately before the word 'modified' so that the latter word could be thought to refer to activities which are similar to impoundments, diversions, or channel deepenings, and thus to exclude other kinds of activities which modify waters, such as the dumping of liquid chemicals which alter the waters but do not necessarily affect the depth or the course of the channel.

"When an industrial polluter discharges or deposits wastes of any kind or description, he is modifying the waterway in a manner that may be detrimental to our environment whether or not

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8/ Mercury Hearings, supra, pp. 538 - 539.

a construction activity is involved. It is this very modification which could affect the conservation of our Nation's fish and Wildlife resources that is subject to scrutiny under the Coordination Act by the Agencies with the technical and scientific expertise in this area, namely the U.S. Fish and Wildlife Service and the State fish and game agencies."9/

In his reply of February 17, 1971, CEQ's General Counsel, Mr. Timothy Atkeson, said:10/

"You have raised a question about the Executive Order's characterization of the Fish and Wildlife Coordination Act as being applicable 'where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made.' This was not intended as anything more than a paraphrase of the statute as written. Since you raised this question we have undertaken a reexamination of the statute and its legislative history and will undertake to resolve the question in the course of working out in the regulations Interior's and NOAA's detailed relation to the permit program. (Underlining supplied.)

This matter was further discussed by Mr. Jordan on February 18-19, 1971 at Joint hearings of the House Conservation and Natural Resources Subcommittee and the then Senate Subcommittee on the Environment as follows (pp. 21-22):

"Mr. REUSS. As to the third heading of the section you are talking about, little 'd' little '2', that one refers to the Fish and Wildlife Coordination Act, and as you have it written in your newly proposed regulation, it seems to me it vitiates the Fish and Wildlife Coordination Act. There the Congress said 'the Corps shall consult with the Bureau of Fisheries and Wildlife in the Department of Interior' on a whole range of problems. Will discharges into the water hurt swimmers, fishermen, marine life, the whole business. Here, however, it seems to me you have narrowed that and [admit] the Fish and Wildlife Coordination Act only where somebody is modifying the channel, doing a big dredging job.

9/ Mercury Hearings, supra, p. 545-546.

10/ Mercury Hearings, supra, p. 543.

"I will admit it applies there too, but I think the mistake was made when you apparently ruled it out for the ordinary discharging of these toxins, poisons, oxygen-demanding refuse, and all the other things which are the subject of the Refuse Act. In this case I think that you draftsmen in the Department of the Army were the victims of an ineptly drafted Executive Order of the President which used this same language. I am wondering if this is not serious enough so that it would not be worthwhile going back to the Chief Executive and pointing out this, I think, inadvertent error and then correcting this part of your proposed regulation. I have written you on this, and you did not deal with it in your testimony this morning.

"Mr. JORDAN. You are not the only one who raised that question. We have had people in the fish and wildlife business who have raised it. I think part of the problem is that the Executive order language is sort of a paraphrase of the Fish and Wildlife Act.

Mr. REUSS. The trouble is they threw in 'similarly.' The 'similarly' makes it look as though they are talking about big dredging channel improving operations, and the act did not have that word in it.

"Mr. JORDAN. I realize that, and the act talks about modifying for any purpose whatsoever which is pretty broad. We have been looking at the legislative history of that act, and it is not particularly revealing. There is not a lot in the reports or in the hearings that gives us much help. We recognize that this question is one of the major issues that we will have to resolve in the final rounds on these regulations.

"Mr. REUSS. I hope when you do that you will take account of the fact that 'similarly' is just not in the statute and it somehow slipped in. I am sure the President, if asked by the Department of the Army, would be happy to clarify his Executive order. I think the whole thing was inadvertent, really, but it could cause trouble and now is the time to fix it up.

"Mr. JORDAN. We are going to try to fix it up in a way satisfactory to everybody and we are talking to Interior and the NOAA people." (Underlining supplied.)

The "re-examination" promised by Mr. Atkeson did result, as Mr. Jordan stated, in the Corps' regulations being revised so as "to fix it up in a way satisfactory to everybody," by eliminating the unfortunate paraphrase. Despite this history, EPA has resurrected essentially the same arguments all over again in its February 14, memorandum, EPA states:

> "The regulations under which the Corps of Engineers formerly operated the permit program, however, went beyond the requirements of the Executive Order. They required consultation with NOAA and Interior with respect to all permits, whether or not meeting the requirements of the Executive Order. Furthermore, regional representatives of NOAA or Interior could by objecting block issuance of any permit at the regional level, and force the matter to headquarters for resolution." (Footnotes omitted.)

The Corps' regulations "went beyond the requirements of the Executive Order" because the Executive Order was inconsistent with the statute. It was, as Messrs. Atkeson and Jordan emphasized, a mere "paraphrase" of the statute that turned out to be wrong. Once that fact became apparent the Corps and the CEQ quite properly revised the regulations to correct this situation. This apparently was easier than asking the President to revise the Executive Order which now, with the enactment of Public Law 92-500, has no status, except that of a historic document.

VI. THE SENATE VERSION OF THE 1972 AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT EXPRESSLY PROVIDED THAT THE COORDINATION ACT SHALL NOT APPLY TO EPA'S PERMIT PROGRAM. THE HOUSE OF REPRESENTATIVES, HOWEVER, REJECTED THIS LIMITATION ON THE COORDINATION ACT.

EPA's March 21 letter to me acknowledged that the "regulations under which the Corps of Engineers formerly operated the permit program...required consultation with NOAA and Interior with respect to all permits..." But that letter asserts that the legislative history accompanying the amendment to section 511(b) of the FWPC Act supports the proposition that the Coordination Act would be "applicable to the issuance of Federal permits under Section 402 of the FWPC Act only in those cases" involving permits for discharges resulting in impoundment, diversion, or dredging of a streambed.

Once again EPA has taken a broad swipe at a problem and reached an unsupportable conclusion. Nothing in the legislative history of this provision supports EPA's contention.

When the Senate on Nov. 4, 1971, adopted S.2770, it included section 511(b), as follows:

> "(b) The consultation and coordination requirements of the Act of March 10, 1934, as amended (16 U.S.C. 661, et. seq.), shall apply under this Act only to the provisions of (1) section 306 of this Act; (2) the publication of information under section 304 of this Act; and (3) the establishment of guidelines under section 403 of this Act."

The Senate report (S. Rept. 92-414, Oct. 28, 1971), in explaining this section, states (p. 86) "that the consultation and coordination requirements" of the Coordination Act "shall apply only" to three identified sections of S.2770. None of these sections included the permit sections of the bill.

The House Committee on Public Works adopted this same provision in reporting out a companion measure, H.R. 11896, on Mar. 11, 1972. The Committee report (H. Rept. 92-911, Mar. 11, 1972) discussed the amendment as follows (p. 137)

> "The Committee does not intend by this provision to decrease or limit the consideration of fish and wildlife which must be accorded each and every action taken under the Federal Water Pollution Control Act."

Just prior to this, ten Members of Congress and myself, in a February 24, 1972 letter to the House Committee, said:

> "Section 511(b) of H.R. 11896 makes the Coordination Act specifically applicable to the sections of the bill on national standards of performance, the publication of information and guidelines regarding water quality, and the establishment of ocean discharge criteria. We support this broadened application of that Act. But, in broadening the Act, the bill also weakens the Coordination Act by making it inapplicable to the new permit program established under section 402 of the bill.
>
> * * * * *
>
> "We urge that section 511(b) of H.R. 11896 be amended so that the Coordination Act is applicable to the new permit program. This will insure that State fish and game agencies, NOAA, the Fish and Wildlife Service will have the same opportunity to review and comment on these permit applications as they now have in the case of all permit applications filed under the River and Harbor Act of 1899.
>
> "We think that such review and comment by these agencies is essential for the protection of the Nation's fish and wildlife resources."

Two Members of the House Committee, Representatives Abzug and Rangel, also disagreed with the Committee's action in adopting the Senate provision. In their "Additional Views" (H. Rept., supra, pp. 393, 409-410) they said:

> "Section 511(b) of the bill with one stroke of the pen broadens the scope of the Fish and Wildlife Coordination Act and with another drastically restricts that law.
>
> "The bill specifically establishes that the policies and requirements of the Fish and Wildlife Coordination Act 'shall apply only to the provisions' of the bill relating to (a) national standards of performance (sec. 306), (b) the publication of information (sec. 304), and (c) the establishment of guidelines (sec. 403). It will not apply to:
>
> (a) permits issued by EPA under section 402 of the bill; or

(b) permits issued by the Corps for dredged or fill material.

With this amendment, the Interior Department's Bureau of Sport Fisheries and Wildlife and the State fish and game agencies will no longer have statutory authority to review and comment on permit applications to discharge wastes or dredge and fill materials into the navigable waterways. There is no justification for eliminating such review and comment by these agencies.

We recommend the deletion of the word 'only' in section 511(b). With this change, the Coordination Act will apply, as it does today, to those permits." (Underlining supplied.)

All these arguments of Representatives Abzug and Rangel were fresh in the minds of the Members of Congress when more than 40 co-sponsors joined me in support of an amendment to leave the Coordination Act applicable to the whole bill, and we announced that we would offer it on the House floor. It was, however, not necessary to offer it, because Congressman Wright one of the Committee Floor Managers of the bill, offered an amendment "in the nature of a Committee amendment" to strike section 511(b) from the House bill. In doing so, Congressman Wright entered into the following colloquy with me:11/

"Mr. WRIGHT. Mr. Chairman, this, too, is a corrective amendment which I understand has been cleared on both sides of the aisle. It would make the Fish and Wildlife Act applicable in every respect that it applies by its own terms to all sections of the bill. There was an inadvertence by which this particular section was put in the bill that renders the Fish and Wildlife Act inapplicable in certain instances. This was not the intention of the committee to do this.

"Mr. DINGELL. This is one of the amendments my colleagues and I were going to offer although in slightly different form. It is eminently satisfactory to us. I thank the committee and commend them for it and rise in support of it.

"Mr. HARSHA. Mr. Chairman, I join with the distinguished gentleman from Texas in urging the adoption of this amendment. We on this side of the aisle support it wholeheartedly."

The amendment was agreed to and later it was accepted by the Senate conferees (H. Rept. 92-1464, Sept. 28, 1972, p. 149). I pointed out on the House floor on Oct. 4, 1972 that the conferees accepted "the elimination of any amendment restricting the Fish and Wildlife Coordination Act." 12/

Congressman Wright's floor remarks, contrary to EPA's contention, are not "consistent" with EPA's "view" that the Coordination Act "would not apply to Subsection 402 permits." Once section 511(b) was eliminated, the Coordination

11/ Committee Print "A Legislative History of the Water Pollution Control Act Amendments of 1972" (p. 651).

12/ Committee Print, supra, p. 248.

Act, as I have shown, would by its own terms apply to these permits.

VII. THE COORDINATION ACT APPLIES TO PERMITS ISSUED BY THE STATES UNDER SECTION 402 OF PUBLIC LAW 92-500, AS WELL AS THOSE ISSUED BY EPA.

EPA's February 14 memorandum contends that the Coordination Act does not apply to permits issued by a State pursuant to section 402 of Public Law 92-500, because, EPA says, (a) "the States receive no authorization, by permit, license, or otherwise, from the Federal Government to carry out a permit program"; (b) Public Law 92-500 "simply requires" the EPA Administrator "to suspend the issuance of permits"; and (c) the "only change effected" by Public Law 92-500, insofar as the States are concerned, is that "if a State's program meets certain requirements, dischargers receiving permits from the State will be insulated from Federal enforcement action". We disagree.

EPA's Associate General Counsel stresses that the States receive "no authorization" from EPA to carry out the program. But he fails to explain the significance of this statement in regard to whether or not the Coordination Act applies to State issued permits. Furthermore, there is, indeed, no significance to this assertion, because the Federal Water Pollution Control Act specifies that no State program may operate under the Act without EPA approval.

It is true that section 402(c)(1) requires EPA to "suspend" issuance of a permit within 90 days after a State submits a permit program. But first EPA must "approve" the program under section 402(b).

EPA's February 14 memorandum simply gives no attention to section 402(b) of Public Law 92-500, which specifies that before a State can administer its own permit program in lieu of EPA's program under section 402(a), the State must first "submit" to EPA "a full and complete description" of the proposed program, and EPA's Administrator must then "approve" it, if, in the judgment of EPA's Administrator, such program complies with the statute and EPA's guidelines. (underlining supplied.) The Senate report (S. Rept. 92-414); Oct. 28, 1971) on S.2770, in commenting on this provision, states (p. 70):

> "Any State may create its own permit system, following Section 304 guidelines. The Administrator shall approve the State permit program and delegate authority to the State, unless the State program fails to have adequate authority to carry out several specified functions."

The conference report (H. Rept. 92-1465, Sept. 28, 1972, in describing the Senate bill, states that "the Administrator can delegate permit authority to a State if the State program is adequate". The report then states that the "conference substitute [for section 402] is basically the same as the Senate bill as revised by the House amendment". The House amendment did not affect the provisions in the Senate bill for approval of a State program.

EPA has made it clear that such approval will not be pro forma. On February 9, 1973, the then Administrator, Mr. William Ruckelshaus, assured the House Conservation and Natural Resources Subcommittee that:

> "EPA procedures for approval of State programs are outside the scope of guidelines specifying the elements of those programs. We do intend, however, to provide full opportunity for public participation in the approval of State programs. We will make copies of each State program submission available to the public for inspection and copying. We expect to hold public hearings on State program submissions prior to the making of a final determination. Public comments and suggestions will be solicited throughout the approval process. We will make public our policies and procedures with respect to State program approvals prior to approving any such programs under section 402 of the Act."

Assuming that there is any significance to the concept of "authorization" stressed in EPA's February 14 memorandum, we think that the statutory requirement that EPA must give its approval to a proposed State permit before that program is operative under the law is clearly tantamount to an "authorization" of the program by EPA. If EPA's Administrator "determines" that a State lacks "adequate" authority to carry out the program, he cannot approve it. In such case, the State program is not authorized.

EPA's February 14 memorandum also stresses that, prior to Public Law 92-500, "States were free to enact laws requiring discharge permits". That is true, but wholly irrelevant. What we are here discussing is not a State permit program for exclusively State purposes, but rather a State program approved by EPA and administered pursuant to the Federal Water Pollution Control Act for purposes of the Federal law.

Under its EPA-approved permit program, the State must act within Federal law and regulations, and, in fact, deal directly on most permit applications with EPA. For example, the State must send to EPA a copy of "each permit application" and "provide notice" to EPA "of every action related to the consideration" of such application (Sec. 402(d)(1)). Finally, EPA has up to 90 days to "object in writing to the issuance" of a permit.

The State permits are treated by the law as equivalent to EPA permits. They are "deemed" to be permits issued under the Refuse Act, as well as section 402. (See Sec. 402(a)(4).)

A polluter provided a State-issued permit (under an EPA-approved State program) or an EPA-issued permit is never "insulated" from Federal enforcement action. The issuance of a permit by a State does not preclude Federal enforcement against the permittee where a violation occurs, nor does it preclude Federal enforcement under the "emergency powers" provisions of the law (sec. 504). EPA's February 14 memorandum is clearly erroneous on this issue.

Equally irrelevant is EPA's quotation of Congressman Wright's floor remarks (Cong. Rec. (daily issue) Oct. 4, 1972, p. H9129) when he said:

> "[The] States, under State law, could issue State discharge permits. These would be State, not Federal, actions, and thus, whether for existing or new sources under section 306, such permits would not require environmental impact statements."

Congressman Wright was dealing only with the effect of NEPA on a State permit program. Section 511(c)(1) of the Federal Water Pollution Control Act specifically states that, with but two exceptions, "no action of the Administrator" under the FWPC Act shall be deemed "a major federal action" for purposes of filing an environmental impact statement under NEPA. Congressman Wright's point about the State not having to file environmental impact statements under NEPA was made because section 511(c)(1) dealt only with the "actions of the Administrator", not actions of the States. EPA's February 14 memorandum errs egregiously in drawing from his remarks the wholly different conclusion that "other Federal statutes would not be applicable to State discharge permits because they were to be issued under State not Federal law". If EPA is correct, then, for example, the Federal civil rights laws would also "not be applicable" to these permits.

Congress never intended such a result. There is nothing in either the specific provisions of section 511(c)(1) of the Act, or in Congressman Wright's quoted remarks, which deals with the issue of whether the Coordination Act applies to permits issued by a State under section 402(b) of the law.

VIII. EPA'S CONTENTION THAT UNDER ITS PROPOSED REGULATIONS INTERIOR AND NOAA STILL HAVE AN OPPORTUNITY, LIKE THE PUBLIC IN GENERAL, TO COMMENT ON EACH PERMIT APPLICATION IGNORES THE PURPOSE OF THE FISH AND WILDLIFE COORDINATION ACT.

EPA's February 14 memorandum concludes (p. 6):

> "Regardless of the applicability of the Fish and Wildlife Coordination act, the applications for permits under Section 402 are public in all cases, and our permit program procedures require opportunity for public comment. Accordingly, there will be ample opportunity for the expression of views of the Department of the Interior with respect to the issuance of all permits."

In its March 21 letter to me, EPA's General Counsel, Mr. Quarles, stressed this point. He said:

"I am at a loss to understand the basis for the objections which you have raised concerning this matter. If your primary concern is to ensure that the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration will be given an opportunity to comment and provide advice on proposed permit issuance actions, I would like to assure you that ample opportunity will be provided for such comment and advice by our regulations for the National Pollutant Discharge Elimination System (NPDES). Our regional personnel will be directed to provide permit application forms to Interior and NOAA upon request, and will be authorized to include in permits conditions recommended by those agencies as necessary to avoid substantial impairment of fish, shellfish, or wildlife resources."

However, the "basis" for Interior, commerce, EDF, and our Subcommittee to raise "objections" to the course of action EPA seeks to follow is set forth in his same letter to me, where he says:

"It may be necessary, where abatement of pollution is of particular urgency, to issue a permit after providing a relatively short time for receiving comments from other Federal agencies and the public. If one of the agencies with which consultation is required by the Fish and Wildlife Coordination Act had, in such a case, failed to provide comments in time, an action might lie against the Agency where an interested person alleged that we had failed to 'consult', as required by that Act. Thus polluters might utilize that Act to delay needed clean-up measures."

The Coordination Act places the burden on EPA to "consult" with Interior and NOAA. EPA's regulations shift that burden to Interior and NOAA. Instead of the greyhound pursuing the rabbit, the rabbit would be required to pursue the greyhound. Experience shows that this is not an even match.

In this connection, I call your attention to the comments of the House Committee on Government Operations in its report (H. Rept. 92-1401, Sept. 18, 1972) entitled "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca" (copy enclosed). The Committee said (p. 19):

"The committee commends the Corps for amending its procedure to make it consistent with the Fish and Wildlife Coordination Act which places a duty on the Corps to 'consult' with the Fish and Wildlife Service. The mere issuance of a general public notice certainly is not sufficient to meet this statutory obligation. To comply with the law, the Corps has an obligation to seek the Service's formal comments on each permit application or determine that the Service has none to make."

These comments apply with equal force to section 402 permits.

I want to emphasize that this is not an unreasonable burden on EPA. A table provided to the House Conservation and Natural Resources Subcommittee by the Interior Department on February 5, 1973, shows that the Department does not comment on all permit applications. The Department noted "that many of the applications made to the Corps for permits have little or no impact on fish and wildlife and that we do not report to the Corps in these cases. Formal reports are filed when the resources would be adversely affected and substantive comments are to be made." 13/ I feel certain that this will occur in the case of EPA permits also.

IX. CONCLUSION

I believe EPA errs in contending that the Coordination Act does not apply to all permits issued under section 402 of Public Law 92-500. Its conclusions are unsupported by law, legislative history, or long administrative practice. I urge that they be rejected.

I thoroughly disagree with Mr. Quarles' statement in his March 21 letter to me:

> "In light of our commitments regarding review and comment by affected Federal agencies, including the Department of the Interior and NOAA, it does not seem likely that the environment would be better served by applying the Fish and Wildlife Coordination Act to NPDES permits."

The Coordination Act was passed because many citizens believed that fish and wildlife resources were not being adequately protected and preserved by the Federal agencies which issue permits to construct or discharge into navigable waters. They did not feel confident that the permitting agencies

13/ The Interior table is as follows:

Year	No. of Applications	No. of Reports Prepared
1962 CY	552	66
1963 CY	1,926	69
1964 CY	1,186	101
1965 CY	1,324	77
1966 CY	1,539	87
1967 CY	data missing	data missing
1968 CY	5,146	355
1969 CY	5,122	413
1970 FY	5,042	470
1971 FY	5,659	658
1972 FY	6,272	1,181

gave sufficient consideration to the fish and wildlife values. They believed that the Government's fish and wildlife experts would do a better job. I share that belief.

I have great praise for EPA. But it, too, makes mistakes. When other Federal agencies with expertise and the public scrutinize EPA's efforts, I will feel more confident that these mistakes will be fewer.

EPA's 402 proposed regulations and final guidelines should be revised immediately to provide that:

(a) the Coordination Act shall apply to all permits issued thereunder by EPA and the States;

(b) a copy of the permit application shall immediately, upon receipt by EPA, be sent to the BSF&W and NOAA and the appropriate State fish and game agency for review and comment; and

(c) like the Corps of Engineers, these agencies will be given "a stated number of days to" respond (which "normally" will be 30 days), but where more time is needed, "more time will be granted where it appears that the public interest warrants such extension" (See 38 F.R. 1365, sec. 125.14(b)).

I emphasize also that the Coordination Act applies to all permits issued by EPA under Public Law 92-500, such as those issued under section 404.

X. ADDITIONAL MATTER

Your April 26 letter to me notes that an "order" issued by the Attorney General directs the Office of Legal Counsel to (a) "prepare the formal opinions of the Attorney General" issued pursuant to 28 U.S. Code 511 and 512, and (b) to "render informal opinions and legal advice" to Executive branch agencies.

I am familiar with this order, but I point out that such an "order" is only as good as the foundation upon which it is based. As to that part of the "order" relating to "formal" Attorney General opinions, there is unquestionably a firm statutory basis. But none exists for that part of the "order" authorizing the Office of Legal Counsel to provide to Federal agencies the legal service of rendering "informal" opinions. Such a service is undoubtedly useful, but, when rendering such opinions, the Department should caution such agencies, including EPA, that such opinions lack the weight of an Attorney General opinion, and, of course, will not preclude anyone from filing a suit alleging that EPA has failed to comply with the "consultation" requirements of the Coordination Act.

Finally, I note your statement that if EPA "wishes to obtain a formal opinion from the Attorney General, it must ask the President to request it". I think this is archaic. I fail to see why, in the twentieth century, only a Cabinet level agency can ask for such opinions, and other agencies cannot. If true, your Department is derelict in not long ago recommending to Congress that the new law be amended to allow all Federal agencies to ask for such opinions directly, rather than burden the President with such matters. I request that you promptly provide to me, as a drafting service, an amendment that will authorize such direct requests for Attorney General opinions.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and Wildlife
Conservation and the Environment

cc:
Honorable Henry S. Reuss, Chairman
Conservation and Natural Resources Subcommittee

Honorable Guy Vander Jagt, Ranking Minority Member
Conservation and Natural Resources Subcommittee

Honorable Rogers C.B. Morton
Secretary of the Interior

Mr. Robert W. Fri
Acting Administrator, EPA

Mr. Nathaniel P. Reed
Assistant Secretary, Interior

Dr. Robert M. White
Administrator, NOAA

Environmental Defense Fund

Natural Resources Defense Council

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

May 9, 1973

Honorable Henry S. Reuss, Chairman
Conservation and Natural Resources Subcommittee
Committee on Government Operations
United States House of Representatives
B-349 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

We are pleased to advise that the issue of whether the provisions of the Fish and Wildlife Coordination Act apply to pollutant discharge permits issued by EPA under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 has been satisfactorily resolved between the appropriate departments and agencies of the Executive Branch. At a meeting in the Old Executive Office Building today between OMB, EPA, Justice, Interior and Commerce/NOAA, it was agreed that the provisions of the Fish and Wildlife Coordination Act do indeed apply, and that both Interior and Commerce/NOAA will have an opportunity to review and comment on all applications for permits under the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500). The EPA regulations on the new program will be appropriately amended to require notice and consultation.

We were advised by EPA of the staggering backlog of approximately 30,000 applications requiring action under the Act, and the enormous workload which this portends for Interior and NOAA. EPA was particularly concerned about some 200 applications for which they have already issued public notice. Both Interior and NOAA have agreed to have our regional directors in the field review these 200 or so applications and determine by the close of business on Friday of next week, 18 May, which of these applications will require additional review and comment time by us.

It was agreed that Interior and Commerce/NOAA would have thirty days in the normal course of events to review and comment on the applications to EPA under the Act, and that if there were no response within that time it would be assumed as a responsibility of Interior or Commerce/NOAA that no comment was forthcoming. It was further agreed that appeal to the EPA Regional Administrator would be made for any extension of this thirty-day comment period, and the Regional Administrator would determine if the extension was warranted.

It was further determined that after delegation of authority to the States under permit guidelines promulgated by EPA, Interior and Commerce/NOAA would be entitled to comment through EPA on permits proposed to be issued by States during the period EPA has to review a proposed State permit.

The net effect of this determination within the Administration is that while Interior and Commerce/NOAA will have no right of veto on a permit application, we will nevertheless have the same rights with relation to EPA as we had with the Corps of Engineers under the regulations which were promulgated to carry out the refuse dumping program under the Rivers and Harbors Act of 1899.

We are pleased, as we know you must be, that EPA has agreed to revise the proposed regulations to ensure that our responsibilities under the Coordination Act will be met.

Cordially,

Howard W. Pollock
NOAA Deputy Administrator

cc: Director, Office of Management and Budget
Attorney General
Secretary of the Interior
Administrator, Environmental Protection Agency
Honorable Guy Vander Jagt

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

JUL 17 1973

RECEIVED
JUL 20 1973
CONSERVATION AND NATURAL
RESOURCES SUBCOMMITTEE

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I wish to thank you and Chairman Dingell for your letter of June 6 which enclosed a copy of a letter to Secretary Morton of Interior concerning discharge permits issued by EPA.

As Secretary Dent's response (copy attached) to a similar letter indicates, we intend to meet our obligations and responsibilities under the Fish and Wildlife Coordination Act to the best of our capability.

I wish to add my personal assurance that we will make every effort possible to do an effective job of fulfilling the provisions of the Act. Following passage of PL 92-500 we took a strong position in negotiations with EPA to insure that their permit program would in fact be subject to the terms of the Fish and Wildlife Coordination Act. As you are aware, my Deputy, Howard Pollock, ably handled the matter for DOC/NOAA. He will continue to be cognizant of our follow on activities. We expect to put a major effort into working with EPA's regional administrators to determine in what ways we can achieve the maximum intent of the Fish and Wildlife Coordination Act with the NOAA effort.

I know how concerned and effective you have been in maintaining the integrity of the Fish and Wildlife Coordination Act, and we in NOAA are pleased to be a key part in its continued implementation.

Sincerely,

Robert M. White
Administrator

Enclosure

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

JUL 14 1973

Honorable Henry S. Reuss
Chairman, Subcommittee on Conservation
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

RECEIVED
JUL 20 1973
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

Dear Mr. Chairman:

This is in further response to the June 6 joint letter from you and Chairman Dingell regarding the Environmental Protection Agency (EPA) regulations and the obligations of the Department of Commerce under the Fish and Wildlife Coordination Act. We are responding to each of you by separate identical letters.

Your letter expressed a request that the Commerce Department:

"(a) not waive its right to receive any permit applications or categories thereof filed with EPA after June 1, 1973;

(b) insist on receiving each application filed with the Corps or EPA prior to June 1, 1973; and

(c) formally inform EPA in writing in the case of each permit application and in a timely fashion either (i) that the discharge will, or will not, significantly affect fish, shellfish, wildlife, and other resource values, or (ii) that you are unable to comment under the law because of a lack of funds and/or personnel, and (iii) that your statements mentioned in (i) and (ii) above be available to the public."

We intend to meet our obligations and responsibilities under the Fish and Wildlife Coordination Act to the best of our capability. We do not intend to waive the right to receive any permit application for a discharge which could, in our judgment, affect those resources for which we are responsible. As a matter of fact, our position on this was established in the May 9 letters of Deputy Administrator Howard W. Pollock of the National Oceanic and Atmospheric Administration (NOAA) to you and Chairman Dingell. Those letters stated "At a meeting in the Old Executive Office Building today between the Office of

Management and Budget, the Environmental Protection Agency, Department of Justice, Department of the Interior and Department of Commerce/NOAA it was agreed that the provisions of the Fish and Wildlife Coordination Act do indeed apply, and that both Interior and Commerce/NOAA will review and comment on all applications for permits under the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500)." Thus we intend to perform the appropriate action on each permit application. We feel that the public is entitled to the best effort that we can make on each application within the framework of our funds and manpower. Where limitations of the latter are the reasons that we cannot comment on any particular application, I would not object to this fact being so stated.

In the interest of economy I contemplate that individual reports would not be necessary in all cases, but rather that a consolidated list of applications might be covered by reference in a single report. Similarly a consolidated report might be used where it was determined that several applications were all of little consequence and were not expected to have any effect of significance.

The comments of the Department of Commerce to EPA or the appropriate State licensing agencies, under authority of the Fish and Wildlife Coordination Act, will be made available to the public once they have been formally received by the licensing agency to which they are directed in accordance with EPA regulations.

Sincerely,

John K. Tabor

Acting Secretary of Commerce

June 6, 1973

Honorable Frederick B. Dent
Secretary
Department of Commerce
Washington, D. C. 20230

Dear Secretary Dent:

On May 22, 1973, the Environmental Protection Agency promulgated regulations (38 F.R. 13528) concerning waste discharge permits issued by EPA pursuant to sections 402 and 405 of the Federal Water Pollution Control Act (Public Law 92-500, October 18, 1972).

Sections 125.14f(1) and (2) of the EPA regulations deal with EPA's obligation under the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.) to consult with the fish and wildlife agencies of the Interior Department and the Commerce Department. These sections specify:

1. As to applications filed with EPA after June 1, 1973: EPA shall furnish copies of such applications to the Interior Department and to the Commerce Department. Each department "may waive" its "right to receive any permit applications or categories thereof."

2. As to applications filed with EPA prior to June 1, 1973: Representatives of EPA, Interior and Commerce will meet "in order to reach agreement as to which existing application forms" will be sent to Interior and Commerce.

3. As to all applications received by these agencies: The regulation allows Interior and Commerce up to 30 days "to evaluate the effects of the discharge on fish, shellfish, and wildlife resources," and to advise EPA of "their evaluations," but provides that upon request by either Interior or Commerce, EPA may grant "more time" if the EPA Regional Administrator believes "that the public interest warrants such extension." The regulation specifies "failure to answer within the allotted period of time will be deemed to be a statement that the agencies do not choose to comment at this time."

It is apparent from the format of the regulations that Interior and Commerce will have a second opportunity to comment on the permit application. This will occur when, pursuant to section 125.31, EPA formulates its tentative determinations and draft permit and issues a public notice thereon which, under sec. 125.32(a)(4) must be sent to "Federal and State fish, shellfish and wildlife resources agencies." But such public notice does not meet EPA's statutory obligation under the Fish and Wildlife Coordination Act to consult with the fish and wildlife agencies of Interior and Commerce on each permit.

We recognize that, for various reasons, including inadequate funding and personnel, your agencies will not be able to provide extensive comments and recommendations on every permit application. But we think that you have an obligation under the Coordination Act to, at least inform in writing EPA, the Corps of Engineers, and other permitting or licensing agencies, and, most importantly, the public that a particular permit application will have no significant effect on fish, shellfish and wildlife resources, or that you lack the funds and manpower to comment thereon. The House Committee on Government Operations, in its report (H. Rept. 92-1401, Sept. 18, 1972), entitled "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca" emphasized that the Corps and other licensing or permitting agencies have "an obligation to seek" your "formal comments on each permit application or determine that" you have "none to make." They cannot meet this obligation if you fail to inform them in a timely fashion, or if you are silent on the application. Furthermore, you fail to meet your obligation under the law and to the public if you "waive" your "right to receive any permit applications or categories thereof," or if, through informal meetings, you agree to waive receipt of some applications.

We therefor request that the Interior Department:

(a) not waive its right to receive any permit applications or categories thereof filed with EPA after June 1, 1973;

(b) insist on receiving each application filed with the Corps or EPA prior to June 1, 1973; and

(c) formally inform EPA in writing in the case of each permit application and in a timely fashion either (i) that the discharge will, or will not, significantly affect fish, shellfish, wildlife and other resource values, or (ii) that you are unable to comment under the law because of a lack of funds and/or personnel, and (iii) that your statements mentioned in (i) and (ii) above be available to the public.

We do not view these matters as simply a paper exercise. Both Interior and Commerce have the obligation to carry out fully the requirements of the Coordination Act. That you have not done so to date is shown in the table prepared by Assistant Secretary Read concerning Corps permit applications upon which the Fish and Wildlife Service (which formerly included the fish and

wildlife functions now exercised by both Interior and Commerce) did not comment during the last 10 fiscal years (See Cong. Rec. (daily issue) June 4, 1973, pp. H4254-H4261, copy enclosed). Just as we have insisted that the Corps and EPA meet their obligations under the law, it is our intention to insist that your agencies do the same.

If you contend, for any reason, that the above requests cannot be met, please advise us promptly and state precisely your reasons for such contention.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and Wildlife
Conservation and the Environment

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee
Committee on Government Operations

Encl

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In Reply Refer To:
FSF/RB
SCSO - S 52201

JUL - 9 1973

Dear Mr. Reuss:

This further responds to your and Representative John D. Dingell's letter concerning this Department's obligation under the Fish and Wildlife Coordination Act to review and comment on all permit applications issued pursuant to Sections 402, 404, and 405 of the Federal Water Pollution Control Act Amendments of 1972.

We agree that the public has a right to know our position on applications. We also believe that the public has a right to expect the Bureau of Sport Fisheries and Wildlife to use efficiently the funds appropriated for review purposes, and thereby provide as much protection as possible for fish and wildlife. If we do not eliminate perfunctory and unnecessary efforts, they will almost surely detract from problems deserving more intensive study and consideration.

To date, we have not been able to predetermine the types of public notices on projects which the Bureau could be assured would offer no appreciable danger to fish and wildlife resources. Should we eventually be able to do this, however, we believe it would be incumbent upon us to waive receipt of such notices. This, of course, would be done in such a manner that the waiver could be retracted if retraction were found proper in the light of new knowledge. It would not be a waiver of the right to receive the notices.

Because of limited funding and personnel, we anticipate the use of form letters and other time- and effort-saving measures, when appropriate, to provide a common response on certain types of applications which are of a similar nature. An example would be those projects having no appreciable impact on fish and wildlife resources and on which the Bureau would have no objection to issuance of the permits.

We further believe that the foregoing philosophy should be applied not only to permits issued pursuant to the Federal Water Pollution Control Act Amendments of 1972, but also to applications received for comment under Section 10 of the 1899 River and Harbor Act and Sections 102, 103, and 104 of the Marine Protection, Research, and Sanctuaries Act of 1972.

As discussed in Assistant Director King's January 4 letter (copy enclosed) to you, the Bureau has not yet developed the level of technical knowledge nor does it have sufficient funding and manpower necessary to provide sound advice to protect fish and wildlife from all waste discharges. The establishment of the demands under the new regulatory programs for review of permit applications by the Bureau will require correction of these deficiencies. We are hopeful that you will support us in our future requests to remedy this situation.

We appreciate your interest in this important matter.

Sincerely yours,

(sgd) Curtis Bohlen

Deputy Assist- Secretary of the Interior

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Enclosure

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HENRY S. REUSS, WIS., CHAIRMAN
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225-6427

NINETY-THIRD CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-C
WASHINGTON, D.C. 20515

August 28, 1973

Mr. Curtis Bohlen
Deputy Assist Secretary
Department of the Interior
Washington, D. C. 20240

Re: FSF/RB
SCSO - S 52201

Dear Mr. Bohlen:

We have received your letter of August 9 responding to the June 6 letter which Chairman Dingell and I sent to you concerning your Department's obligation under the Fish and Wildlife Coordination Act.

Your letter can be read in several ways and therefore is not responsive to our request. You begin by agreeing that "the public has a right to know our position on applications." But the remainder of the letter leaves us with the impression that the public's "right to know" will be abridged in some cases.

As you know, we sent a similar letter on June 6 to the Secretary of Commerce. Enclosed, for your information, is a copy of the July 14 response of Acting Secretary of Commerce John K. Tabor, stating: that NOAA intends "to meet our obligations and responsibilities" under the Act, and does "not intend to waive the right to receive any permit application"; "that the public is entitled to the best effort we can make on each application," and that where money and manpower prevent such comment, he "would not object to this fact being so stated."

If you intend to follow NOAA's lead, we request that you say so forthrightly. In short, will you comply with the request set forth as (a), (b), and (c) (i), (ii), (iii) in our June 6 letter to you? If not, please state which of these you will not comply with and why.

Sincerely,

/Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Encl

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In Reply Refer To:
FSF/RB
FSF 1815

RECEIVED SEP 24 1973
SEP 26 1973
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

Dear Mr. Reuss:

This responds to your August 28 letter stating that our August 9 reply was not responsive to your and Representative John D. Dingell's concern regarding this Department's obligation to review and comment on all permit applications issued pursuant to the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500).

Instructions have been sent out to appropriate offices of the Bureau of Sport Fisheries and Wildlife to improve our reporting procedures by responding formally on all permit applications received. Enclosed for your information is a copy of that instructional memorandum, dated July 13, which clearly states our goal to review all permit applications, not only those submitted under Public Law 92-500, but under other programs as well. In short, we are complying with your June 6 request set forth as (a), (b), and (c).

This Department has no intention of abridging the public's right to know our position on any such permit applications, and we regret that our August 9 reply gave this incorrect impression.

Sincerely yours,

Curtis Bohlen

Acting Assistant Secretary for Fish and Wildlife and Parks

Honorable Henry S. Reuss
Chairman, Subcommittee on Conservation
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Enclosure

United States Department of the Interior

FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
WASHINGTON, D.C. 20240

JUL 13 1973

Memorandum

To: Regional Directors, 1, 2, 3, 4, 5, 6, and Alaska Area Director (RB) (ES)

From: Director, Bureau of Sport Fisheries and Wildlife

Subject: Reporting Permit Applications

In order to improve our service to the public, you are requested to prepare formal comments, effective immediately, on all permit applications regulated by the Corps of Engineers, U.S. Coast Guard, or Environmental Protection Agency proposed to be issued pursuant to Section 10 of the 1899 River and Harbor Act; Sections 402, 404, and 405 of the Federal Water Pollution Control Act Amendments of 1972; and Sections 102, 103, and 104 of the Marine Protection, Research, and Sanctuaries Act of 1972.

Specifically, for every permit application received a report should be prepared for the record. The report is to document the Bureau's position on a particular application such as (1) the Bureau has no objection to issuance, (2) the Bureau recommends denial or modification, or (3) the Bureau states no action will be taken by the Bureau at this time. When several applications are listed and commented on collectively in one letter, each application so listed is considered a separate report. Examples of form letters that may aid you in reporting may be found in Navigable Waters Handbook - Appendix Part A. Correspondence which merely requests additional information on which to base our position does not constitute a report in the sense intended here.

If you have not already done so, all regions and/or area offices should immediately request to receive copies of all permit applications and related material in their respective areas of geographic responsibility from the appropriate regulatory agencies.

Regarding the "no action" reports referred to above, this designation should be reserved for only those applications in which we are unable to respond within a specified time due to lack of personnel, funds, or technical knowledge. Your accurate reporting in this regard will help support future budget requests necessary to meet our obligations under the Fish and Wildlife Coordination Act.

Concerning the Section 402 permits (NPDES program) issued by EPA or the States with EPA supervision, we expect that you will also report on the current backlog of approximately 30,000 applications. We should not waive our right to receive any applications now or in the foreseeable future.

Copies of this memorandum should be promptly furnished all field offices with River Basin and Ecological Services activities.

(Sgd) NORMAN R. CHUPP

HENRY S. REUSS, WIS., CHAIRMAN
JOHN E. MOSS, CALIF.
DANTE B. FASCELL, FLA.
FLOYD V. HICKS, WASH.
LEO J. RYAN, CALIF.
L. [illegible] MOUNTAIN, N.C.
[illegible] BROOKS, TEX.

GUY VANDER JAGT, MICH.
GILBERT GUDE, MD.
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JOEL PRITCHARD, WASH.

225-6427

NINETY-THIRD CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-C
WASHINGTON, D.C. 20515

August 28, 1973

Mr. Curtis Bohlen
Deputy Assist Secretary
Department of the Interior
Washington, D. C. 20240

Re: FSF/RB
SCSO - S 52201

Dear Mr. Bohlen:

We have received your letter of August 9 responding to the June 6 letter which Chairman Dingell and I sent to you concerning your Department's obligation under the Fish and Wildlife Coordination Act.

Your letter can be read in several ways and therefore is not responsive to our request. You begin by agreeing that "the public has a right to know our position on applications." But the remainder of the letter leaves us with the impression that the public's "right to know" will be abridged in some cases.

As you know, we sent a similar letter on June 6 to the Secretary of Commerce. Enclosed, for your information, is a copy of the July 14 response of Acting Secretary of Commerce John K. Tabor, stating: that NOAA intends "to meet our obligations and responsibilities" under the Act, and does "not intend to waive the right to receive any permit application"; "that the public is entitled to the best effort we can make on each application," and that where money and manpower prevent such comment, he "would not object to this fact being so stated."

If you intend to follow NOAA's lead, we request that you say so forthrightly. In short, will you comply with the request set forth as (a), (b), and (c) (i), (ii), (iii) in our June 6 letter to you? If not, please state which of these you will not comply with and why.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Encl

June 6, 1973

Honorable Frederick B. Dent
Secretary
Department of Commerce
Washington, D. C. 20230

Dear Secretary Dent:

On May 22, 1973, the Environmental Protection Agency promulgated regulations (38 F.R. 13528) concerning waste discharge permits issued by EPA pursuant to sections 402 and 405 of the Federal Water Pollution Control Act (Public Law 92-500, October 18, 1972).

Sections 125.14f(1) and (2) of the EPA regulations deal with EPA's obligation under the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.) to consult with the fish and wildlife agencies of the Interior Department and the Commerce Department. These sections specify:

1. As to applications filed with EPA after June 1, 1973: EPA shall furnish copies of such applications to the Interior Department and to the Commerce Department. Each department "may waive" its "right to receive any permit applications or categories thereof."

2. As to applications filed with EPA prior to June 1, 1973: Representatives of EPA, Interior and Commerce will meet "in order to reach agreement as to which existing application forms" will be sent to Interior and Commerce.

3. As to all applications received by these agencies: The regulation allows Interior and Commerce up to 30 days "to evaluate the effects of the discharge on fish, shellfish, and wildlife resources," and to advise EPA of "their evaluations," but provides that upon request by either Interior or Commerce, EPA may grant "more time" if the EPA Regional Administrator believes "that the public interest warrants such extension." The regulation specifies "failure to answer within the allotted period of time will be deemed to be a statement that the agencies do not choose to comment at this time."

It is apparent from the format of the regulations that Interior and Commerce will have a second opportunity to comment on the permit application. This will occur when, pursuant to section 125.31, EPA formulates its tentative determinations and draft permit and issues a public notice thereon which, under sec. 125.32(a)(4) must be sent to "Federal and State fish, shellfish and wildlife resource agencies." But such public notice does not meet EPA's statutory obligation under the Fish and Wildlife Coordination Act to consult with the fish and wildlife agencies of Interior and Commerce on each permit.

We recognize that, for various reasons, including inadequate funding and personnel, your agencies will not be able to provide extensive comments and recommendations on every permit application. But we think that you have an obligation under the Coordination Act to, at least inform in writing EPA, the Corps of Engineers, and other permitting or licensing agencies, and, most importantly, the public that a particular permit application will have no significant effect on fish, shellfish and wildlife resources, or that you lack the funds and manpower to comment thereon. The House Committee on Government Operations, in its report (H. Rept. 92-1401, Sept. 18, 1972), entitled "Protecting America's Estuaries: Puget Sound and the Straits of Georgia and Juan de Fuca" emphasized that the Corps and other licensing or permitting agencies have "an obligation to seek" your "formal comments on each permit application or determine that" you have "none to make." They cannot meet this obligation if you fail to inform them in a timely fashion, or if you are silent on the application. Furthermore, you fail to meet your obligation under the law and to the public if you "waive" your "right to receive any permit applications or categories thereof," or if, through informal meetings, you agree to waive receipt of some applications.

We therefor request that the Interior Department:

(a) not waive its right to receive any permit applications or categories thereof filed with EPA after June 1, 1973;

(b) insist on receiving each application filed with the Corps or EPA prior to June 1, 1973; and

(c) formally inform EPA in writing in the case of each permit application and in a timely fashion either (i) that the discharge will, or will not, significantly affect fish, shellfish, wildlife and other resource values, or (ii) that you are unable to comment under the law because of a lack of funds and/or personnel, and (iii) that your statements mentioned in (i) and (ii) above be available to the public.

We do not view these matters as simply a paper exercise. Both Interior and Commerce have the obligation to carry out fully the requirements of the Coordination Act. That you have not done so to date is shown in the table prepared by Assistant Secretary Reed concerning Corps permit applications upon which the Fish and Wildlife Service (which formerly included the fish and

wildlife functions now exercised by both Interior and Commerce) did not comment during the last 10 fiscal years (See Cong. Rec. (daily issue) June 4, 1973, pp. H4254-H4261, copy enclosed). Just as we have insisted that the Corps and EPA meet their obligations under the law, it is our intention to insist that your agencies do the same.

If you contend, for any reason, that the above requests cannot be met, please advise us promptly and state precisely your reasons for such contention.

Sincerely,

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and Wildlife
Conservation and the Environment

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee
Committee on Government Operations

Encl

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

RECEIVED
JUL 17 1973
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE

Honorable Henry S. Reuss
Chairman, Subcommittee on Conservation
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to the June 6 joint letter from you and Chairman Dingell regarding the Environmental Protection Agency (EPA) regulations and the obligations of the Department of Commerce under the Fish and Wildlife Coordination Act. We are responding to each of you by separate identical letters.

Your letter expressed a request that the Commerce Department:

"(a) not waive its right to receive any permit applications or categories thereof filed with EPA after June 1, 1973;

(b) insist on receiving each application filed with the Corps or EPA prior to June 1, 1973; and

(c) formally inform EPA in writing in the case of each permit application and in a timely fashion either (i) that the discharge will, or will not, significantly affect fish, shellfish, wildlife, and other resource values, or (ii) that you are unable to comment under the law because of a lack of funds and/or personnel, and (iii) that your statements mentioned in (i) and (ii) above be available to the public."

We intend to meet our obligations and responsibilities under the Fish and Wildlife Coordination Act to the best of our capability. We do not intend to waive the right to receive any permit application for a discharge which could, in our judgment, affect those resources for which we are responsible. As a matter of fact, our position on this was established in the May 9 letters of Deputy Administrator Howard W. Pollock of the National Oceanic and Atmospheric Administration (NOAA) to you and Chairman Dingell. Those letters stated "At a meeting in the Old Executive Office Building today between the Office of

Management and Budget, the Environmental Protection Agency, Department of Justice, Department of the Interior and Department of Commerce/NOAA it was agreed that the provisions of the Fish and Wildlife Coordination Act do indeed apply, and that both Interior and Commerce/NOAA will review and comment on all applications for permits under the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500)." Thus we intend to perform the appropriate action on each permit application. We feel that the public is entitled to the best effort that we can make on each application within the framework of our funds and manpower. Where limitations of the latter are the reasons that we cannot comment on any particular application, I would not object to this fact being so stated.

In the interest of economy I contemplate that individual reports would not be necessary in all cases, but rather that a consolidated list of applications might be covered by reference in a single report. Similarly a consolidated report might be used where it was determined that several applications were all of little consequence and were not expected to have any effect of significance.

The comments of the Department of Commerce to EPA or the appropriate State licensing agencies, under authority of the Fish and Wildlife Coordination Act, will be made available to the public once they have been formally received by the licensing agency to which they are directed in accordance with EPA regulations.

Sincerely,

John K. Tabor

ACTING Secretary of Commerce

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 11 1973

OFFICE OF THE
ADMINISTRATOR

Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

RECEIVED
JUN 13 1973
CONSERVATION AND NATURAL
RESOURCES SUBCOMMITTEE

Dear Mr. Chairman:

This is in response to your letter of December 15, 1972, concerning the Fish and Wildlife Coordination Act and its relationship to permits to be issued by States under programs approved by the Administrator pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972. We regret the lateness of our reply to your letter. Until recently, discussions were still being conducted on several aspects of the National Pollutant Discharge Elimination System (NPDES), including discussions with the Interior, Commerce, and Justice Departments relating to the Fish and Wildlife Coordination Act. We felt that we could not adequately respond to your letter until our discussions on these important matters were more clearly defined.

Following final discussions with these Federal agencies on May 9, 1973, we completed preparation of our procedural regulations for the NPDES. The regulations were published as final rulemaking in the Federal Register on May 22, 1973.

The regulations specifically provide for coordination with Federal and State fish and wildlife agencies in connection with the issuance of NPDES permits. The Environmental Protection Agency's Regional Administrators are required to notify Federal and State fish, shellfish, and wildlife resources agencies and other appropriate government agencies of each complete application for a permit and of hearings on permit applications and provide such agencies an opportunity to submit their written views and recommendations regarding each permit application. The Regional Administrator also is required to transmit a copy of each fact sheet prepared with respect to a permit application to appropriate officials of Federal and State fish, shellfish, and wildlife resources agencies. Such agencies, if they so choose, also may become parties to any public hearing held with respect to a permit application.

The NPDES regulations further provide that copies of all permit applications filed with EPA after June 1, 1973 be furnished to the

Departments of Interior and Commerce for comment, unless these agencies waive their right to receive any particular permit applications or categories of applications. With respect to approximately 30,000 pending permit applications filed prior to June 1, 1973, the Departments of Interior and Commerce are required to meet with EPA Regional Administrators to determine which of these applications they wish to receive and review. Generally, the two agencies are provided a 30-day period within which to comment on any permit application which they receive. The Regional Administrator may include in a permit any conditions recommended by these agencies necessary to avoid substantial impairment of fish, shellfish, or wildlife resources.

We believe the procedures described above provide a full and complete opportunity for Federal and State fish, shellfish, and wildlife resources agencies to receive, review, and comment on any and all NPDES permit applications.

Our previous rulemaking regarding "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", published in the Federal Register on December 22, 1972, provides that any State or interstate agencies participating in the NPDES are required to notify other appropriate government agencies of each completed application for an NPDES permit and provide such agencies an opportunity to submit their written views and recommendations. Among the procedures which a State or interstate agency must have under the State Permit Program Guidelines is a procedure for mailing copies of public notices (or, on request, copies of fact sheets) regarding applications for NPDES permits to any other Federal, State, or local agencies, upon request, and providing such agencies an opportunity to respond, comment, or request a public hearing.

Thus, following the Administrator's approval of a State permit program, Federal and State fish, shellfish, and wildlife resources agencies will be able to review and comment on permit applications to the same extent they may do so when EPA is issuing NPDES permits. These agencies may comment on any permit application directly to the State or, if the State chooses or if it is more convenient to the fish, shellfish, and wildlife agencies, their comments may be provided through EPA during the period which EPA has to review a proposed State permit. We believe these procedures provide a full and complete opportunity for Federal and State fish, shellfish, and wildlife agencies to receive, review, and comment on permits issued by a State pursuant to Section 402(b).

In order to achieve the effective consultation and coordination required by these procedures, EPA officials met on May 23, 1973, with

Headquarters and field officials of the Departments of Interior and Commerce. This meeting helped establish a significant degree of cooperation and coordination among the various agencies regarding the procedures for carrying out the NPDES regulations. We believe the program is off to an excellent start in this respect.

Thank you for your continuing interest in the implementation of the Federal Water Pollution Control Act Amendments of 1972 and, particularly, the NPDES permit program.

Sincerely yours,

Robert W. Fri
Acting Administrator

[redacted]

[redacted]

NINETY-SECOND CONGRESS

Congress of the United States

House of Representatives

CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM [redacted]
WASHINGTON, D.C. [redacted]

December 15, 1972

Mr. William D. Ruckelshaus
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

Our letter of December 11, 1972, to you discusses EPA's proposed guidelines (published on Nov. 11, 1972; 37F.R. 24088), concerning State programs for issuing waste discharge permits; and EPA's proposed regulations of November 27, 1972 (now pending at the Office of Management and Budget) to govern EPA's issuance of such permits. This supplements that letter.

Our letter pointed out, on pages 12 and 13, that the Fish and Wildlife Coordination Act applies to every permit issued by EPA.

However, we are also concerned about the extent to which the Bureau of Sport Fisheries and Wildlife and the National Oceanic and Atmospheric Administration will have an opportunity to comment on permits issued by a State pursuant to a program approved by EPA under section 402 of the Federal Water Pollution Control Act, as amended by Public Law 92-500.

The Coordination Act (16 U.S.C. 662) refers to modifications of water "by any public or private agency under Federal permit or license." While the States, under section 402, will actually issue the permits, they do so under a Federal program. The permits cannot be issued by a State (a) if they fail to comply with the requirements of section 402 of the Federal law and the EPA guidelines, or (b) if EPA, under section 402(d)(2), objects to their issuance within a prescribed period. Indeed, as we point out on page 6 of our letter of December 11 (with respect to another issue) the Act clearly contemplates that EPA must review all permit applications, unless they are for a category of point sources for which such review has been waived under section 402(e) of the Act "at the time" EPA approves the State permit program. Even after a permit is issued by a State, EPA must enforce the permit's terms and conditions under section 309 of the Federal Water Pollution Control Act.

We think that the permit program is similar to the water quality standards program for interstate waters. There, the States adopted the standards. Once adopted by a State, EPA had to review and approve them. (This procedure is very similar to that to be employed for the permit program). Based on this approval, it has been EPA's interpretation that the State's water quality standards are Federal, as well as State, standards. In short, the fact that the permit forms approved by the State purport to be State permits does not minimize the Federal role in the issuance of the permits and should not be narrowly construed by EPA to take them out of the ambit of the Coordination Act.

We urge that you adopt the view that the Coordination Act does apply to these permits. We believe that this is in the public interest. As a practical matter, the discharges to be authorized by the State permits may, in many cases, have a substantial effect on fish and wildlife. We do not question EPA's expertise on water quality. But the Fish and Wildlife Service, NOAA and the state fish and game agencies certainly have great expertise and competence in fish and wildlife matters which should be utilized in order to achieve proper and effective review of the permit applications.

We believe this is an important matter that should be promptly resolved before EPA approves any State program under section 402 or grants any waivers under section 402(e) of the Federal Water Pollution Control Act. We, therefore, request that you meet with both Interior and NOAA promptly to resolve this issue. We have sent similar letters to Interior and to NOAA.

Please advise us by January 15, 1973 of the results of your meeting.

Sincerely,

Henry S. Reuss

HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Guy Vander Jagt

GUY VANDER JAGT
Ranking Minority Member
Conservation and Natural Resources
Subcommittee

JOHN D. DINGELL
Chairman
Subcommittee on Fisheries and
Wildlife Conservation

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